TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1926

No. 318

EMPIRE TRUST COMPANY, PETITIONER,

vs.

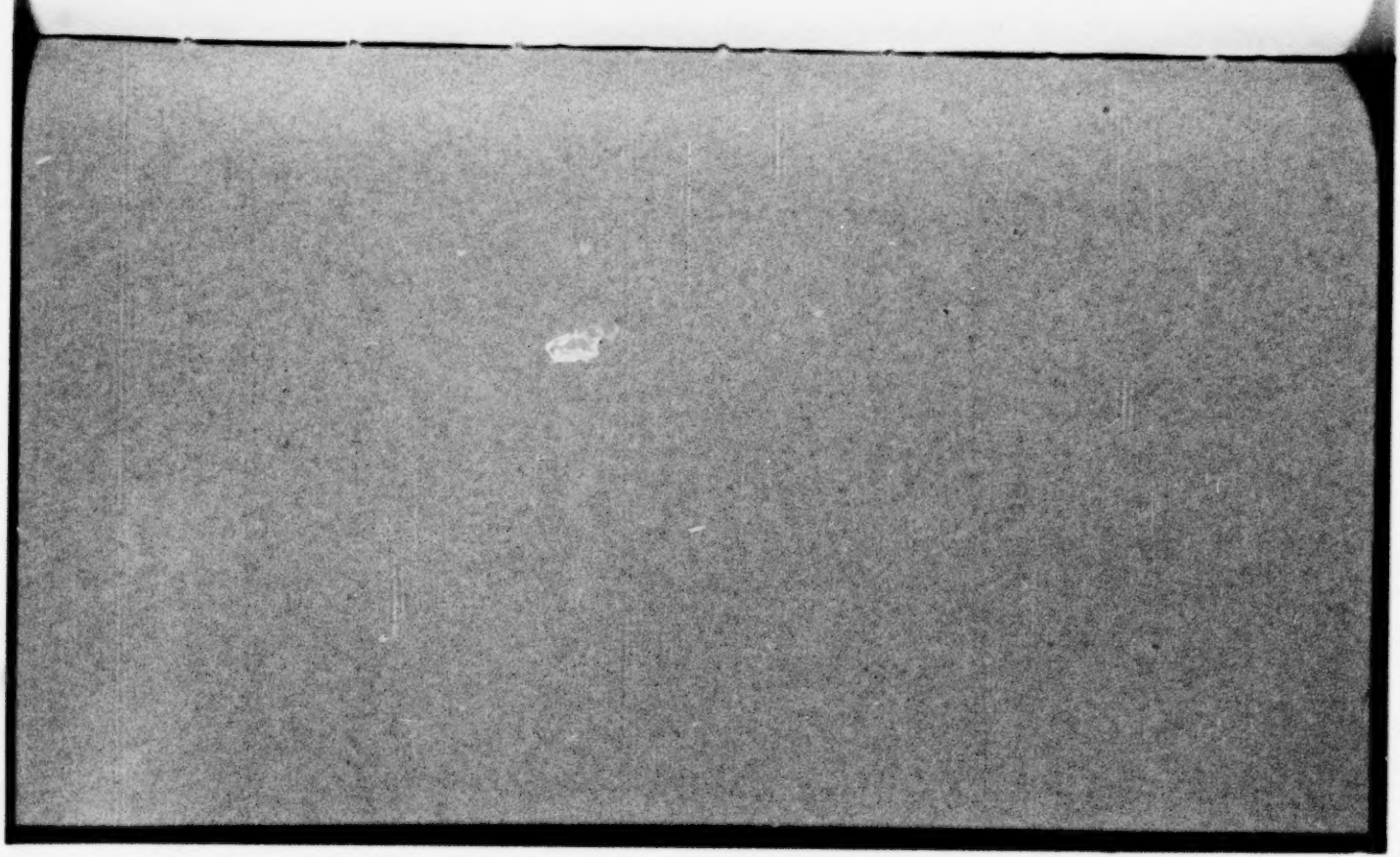
CHARLES HAZLITT CAHAN

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 17, 1926

CERTIORARI GRANTED APRIL 26, 1926

(21,776)



(31,778)

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EMPIRE TRUST COMPANY, PETITIONER,

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Writ of Error on Behalf of Empire Trust Company.

United States District Court

FOR THE SOUTHERN DISTRICT OF NEW YORK.

CHARLES HAZLITT CAHAN,
Plaintiff,

against

EMPIRE TRUST COMPANY,
Defendant.

The President of the United States to the Honorable Judges of the United States District Court for the Southern District of New York, Greeting:

Because in the record and proceedings and also in the rendition of the judgment on a complaint which is in the said United States District Court for the Southern District of New York, before you, or some of you, between Charles Hazlitt Cahan, plaintiff, and Empire Trust Company, defendant, a manifest error has happened to the great damage of the said Empire Trust Company, as by its answer appears.

We being willing that error, if any has been made, should be duly corrected and full and speedy justice done to the parties aforesaid in that behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you

send the record and proceedings aforesaid with all things concerning the same, to the United States Circuit Court of Appeals for the Second Circuit, together with this writ, so that you may have the same in the said United States Circuit Court of Appeals for the Second Circuit at New York within thirty (30) days from the date hereof, that the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals for the Second Circuit may cause further to be done therein to correct the error, what of right and according to the laws and customs of the United
5 States should be done.

WITNESS, the Hon. William H. Taft, Chief Justice of the United States, the 2nd day of February, in the year of our Lord One thousand nine hundred and twenty-five.

ALEX. GILCHRIST, JR.,
Clerk of the United States, District Court for the Southern District of New York.

U. S. D. C.
Writ allowed.
2/2/25. AUGUSTUS N. HAND, *D. J.*
6 A. G. Jr.

Writ of Error on Behalf of Charles Hazlitt Cahan.

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

CHARLES HAZLITT CAHAN,
Plaintiff,

against

EMPIRE TRUST COMPANY,
Defendant.

The President of the United States to the Honorable Judges of the United States District Court for the Southern District of New York, Greetings:

Because in the record and proceedings, as also in the rendition of the judgment on a plea which is in the said United States District Court for the Southern District of New York, before you, or some of you, between Charles Hazlitt Cahan, plaintiff, and Empire Trust Company, defendant, manifest error hath happened to the great damage of the said Charles Hazlitt Cahan, plaintiff, as by his complaint appears.

We, being willing that such error, if any hath been made, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the

10 *Writ of Error on Behalf of Charles Hazlitt Cahan.*

Second Circuit, at the City of New York, together with this writ, so that you have the same at the said place, and file in the Office of the Clerk of the United States Circuit Court of Appeals for the Second Circuit, on the 10th day of April, 1925; that the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals for the Second Circuit may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States ought to be done.

11 WITNESS, the Honorable William H. Taft, Chief Justice of the United States, this 11th day of March, in the year of our Lord One Thousand Nine Hundred and Twenty five.

ALEX. GILCHRIST, JR.,
Clerk of the United States District Court for the Southern District of New York.

The foregoing writ is hereby allowed.

JNO. C. KNOX,
U. S. District Judge.

A. G., JR.

12 Dated, New York, March 11, 1925.

Summons.

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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

CHARLES HAZLITT CAHAN
against
EMPIRE TRUST COMPANY.

L 22—266.

To the above-named Defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your 14
answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

WITNESS, the Hon. Learned Hand, Judge of the District Court of the United States for the Southern District of New
(Seal) York, at the City of New York, this 27th day of July, in the year one thousand nine hundred and twenty.

ALEX. GILCHRIST, JR., 15
Clerk.

HUGHES, ROUNDS, SCHURMAN & DWIGHT,
Plaintiff's Attorneys,
Office and Post Office Address,
100 Broadway,
Borough of Manhattan,
New York City.

16 **Complaint.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

CHARLES HAZLITT CAHAN,
Plaintiff,

against

EMPIRE TRUST COMPANY,
Defendant.

17

The plaintiff herein, by Hughes, Rounds, Schurman & Dwight, alleges, upon information and belief:

I. That the plaintiff is an advocate and attorney-at-law, residing and practicing his legal profession in the City of Montreal, in the Province of Quebec, in the Dominion of Canada, and is a citizen of Great Britain.

II. That the defendant, Empire Trust Company, is and at all times hereinafter mentioned, was a corporation organized and existing under the banking law of the State of New York and engaged in the
18 banking business in the Borough of Manhattan, City of New York, and is a citizen of the State of New York.

III. That the controversy in this suit is between a citizen of a State of the United States and a citizen of a foreign State and that the matter in suit herein exceeds, exclusive of interest and costs, the sum and value of $3,000.

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IV. That during a considerable portion of the years 1915, 1916 and 1917, the plaintiff was temporarily employed in the City of New York and had a temporary residence there and that at the times hereinafter mentioned during said period, the plaintiff had a bank account with the Agents of the Bank of Montreal in the City of New York and a bank account with the Guaranty Trust Company of New York.

V. That on May 29, 1916, the plaintiff, for the purpose of facilitating payment of his personal expenses and liabilities, executed a power of attorney 20
nominating and appointing C. H. Cahan, Jr., as attorney of the plaintiff for, in the name and on behalf of the plaintiff to make, sign and draw checks on the plaintiff's said account with the Agents of the Bank of Montreal, in the City of New York, during a period of two months from said date, which said power of attorney was forthwith deposited with said Agents of the Bank of Montreal, at their office in said City of New York.

VI. That on July 29, 1916, the plaintiff, for the same purposes, executed a similar power of attorney nominating and appointing said C. H. Cahan, Jr., as attorney of the plaintiff for, in the name and 21
on behalf of the plaintiff to make, sign and draw checks on the plaintiff's account with said Agents of the Bank of Montreal, in the City of New York, during a period of three months from said date, which said power of attorney was forthwith deposited with said Agents at their office in New York City.

VII. That on October 30, 1916, the plaintiff for the same purposes executed a similar power of at-

torney nominating and appointing said C. H. Cahan, Jr., as attorney of the plaintiff for, in the name and on behalf of the plaintiff to make, sign and draw checks upon the plaintiff's account with said Agents of the Bank of Montreal, in the City of New York, without any restriction as to time, which said power of attorney was forthwith deposited with said Agents at their office in said City of New York.

VIII. That on September 21, 1916, the plaintiff, for the same purposes, executed a power of attorney, constituting and appointing said C. H. Cahan, Jr., 23 attorney of the plaintiff, in the name, place and stead of the plaintiff, to sign, draw and deliver checks and other orders for the payment of money in connection with any account of funds on deposit which the plaintiff might then or thereafter have with the Guaranty Trust Company of New York, which said power of attorney was forthwith deposited at the office of said Guaranty Trust Company in said City of New York.

IX. That said C. H. Cahan, Jr., had no power or authority, under any of the said recited powers of attorney, to make, sign or draw checks of the plaintiff for the purpose of transferring and appropriat- 24 ing to himself or for his own personal and private use and benefit the funds of the plaintiff.

X. That the plaintiff personally has never had any account or any transactions with the defendant and has never given any orders, directions or instructions to the defendant with respect to any of the transactions hereinafter mentioned.

XI. That the said C. H. Cahan, Jr., at the several times hereinafter mentioned, wrongfully, fraudulently, without consideration therefor, and in breach of his trust as such attorney, from time to time drew twenty-one checks, amounting in all to $31,170.00, which said twenty-one checks, each and all of them, were signed in the name of the plaintiff by said C. H. Cahan, Jr., purporting to act as attorney of the plaintiff, upon the said Agents of the Bank of Montreal, or upon said Guaranty Trust Company of New York, and were payable out of funds, the property of the plaintiff, which were then deposited to the credit of the plaintiff in the plaintiff's personal account with said Agents of the Bank of Montreal, or with said Guaranty Trust Company of New York, as follows:

(1) Check, No. 371, dated July 12, 1916, for the sum of $1,000 drawn upon the Agents of the Bank of Montreal, in the City of New York, payable to the order of said C. H. Cahan, Jr.

(2) Check, No. 387, dated August 1, 1916, for the sum of $5,000 drawn upon the Agents of the Bank of Montreal, in the City of New York, payable to the order of said C. H. Cahan, Jr.

(3) Check, No. 415, dated September 1, 1916, for the sum of $2,000 drawn upon the Agents of the Bank of Montreal, in the City of New York, payable to the order of said C. H. Cahan, Jr.

(4) Check, No. 435, dated September 20, 1916, for the sum of $3,500 drawn upon the Agents of the Bank of Montreal, in the City of New York, payable to the order of the defendant.

(5) Check, No. 449, dated September 30, 1916, for the sum of $1,000 drawn upon the Agents of the Bank of Montreal, in the City of New York, payable to the order of the defendant.

(6) Check, No. 456, dated October 13, 1916, for the sum of $670.00, drawn upon the Agents of the Bank of Montreal, in the City of New York, payable to the order of said C. H. Cahan, Jr.

(7) Check, No. 473, dated November 1, 1916, for the sum of $1,000, drawn upon the Agents of the Bank of Montreal, in the City of New York, payable to the order of said C. H. Cahan, Jr.

(8) Check, No. 495, dated November 17, 1916, for the sum of $1,000 drawn upon the Agents of the Bank of Montreal in the City of New York, payable to the order of said C. H. Cahan, Jr.

(9) Check, No. 514, dated November 29, 1916, for the sum of $1,000 drawn upon the Agents of the Bank of Montreal, in the City of New York, payable to the order of said C. H. Cahan, Jr.

(10) Check, No. 569, dated January 2, 1917, for the sum of $1,000 drawn upon the Agents of the Bank of Montreal, in the City of New York, payable to the order of said C. H. Cahan, Jr.

(11) Check, dated January 3, 1917, for the sum of $3,000 drawn upon the Guaranty Trust Company of New York, in the City of New York, payable to the order of the defendant.

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(12) Check, dated January 13, 1917, for the sum of $4,000 drawn upon the Guaranty Trust Company of New York, in the City of New York, payable to the order of said C. H. Cahan, Jr.

(13) Check, No. 34, dated March 22, 1917, for the sum of $500.00 drawn upon the Guaranty Trust Company of New York, in the City of New York, payable to the order of said C. H. Cahan, Jr.

(14) Check, dated April 12, 1917, for the sum of $500.00 drawn upon the Guaranty Trust Company of New York, in the City of New York, payable to the order of said C. H. Cahan, Jr.

32

(15) Check, dated May 26, 1917, for the sum of $750.00 drawn upon the Guaranty Trust Company of New York, in the City of New York, payable to the order of said C. H. Cahan, Jr.

(16) Check, dated May 29, 1917, for the sum of $500.00 drawn upon the Guaranty Trust Company of New York, in the City of New York, payable to the order of C. H. Cahan, Jr.

(17) Check, dated July 27, 1917, for the sum of $500.00 drawn upon the Guaranty Trust Company of New York, in the City of New York, payable to the order of said C. H. Cahan, Jr.

33

(18) Check, No. 39, dated August 20, 1917, for the sum of $1,000 drawn upon the Guaranty Trust Company of New York, in the City of New York, payable to the order of said C. H. Cahan, Jr.

(19) Check, No. 123, dated August 31, 1917, for the sum of $500.00 drawn upon the Agents of the Bank of Montreal, in the City of New York, payable to the order of said C. H. Cahan, Jr.

(20) Check, No. 121, dated September 1, 1917, for the sum of $350.00 drawn upon the Agents of the Bank of Montreal, in the City of New York, payable to the order of said C. H. Cahan, Jr.

(21) Check, dated October 15, 1918, for the sum of $2,400 drawn upon the Guaranty Trust
35 Company of New York, in the City of New York, payable to the order of said C. H. Cahan, Jr., or the defendant.

XII. That after drawing the said checks as aforesaid, said C. H. Cahan, Jr., wrongfully, fraudulently and in breach of his said trust, and without the authority or knowledge of the plaintiff, endorsed in his own name eighteen of the said checks, which were drawn payable to his own order; and without the authority or knowledge of the plaintiff, said C. H. Cahan, Jr., wrongfully, fraudulently and in breach of his said trust, delivered to the defendant at its said office, in the City of New York, at or
36 about their respective dates, each and all of said twenty-one checks, including three of said checks which were drawn payable to the order of the defendant.

XIII. That the defendant, at the request of said C. H. Cahan, Jr., and without the authority or knowledge of the plaintiff, wrongfully placed each of the said twenty-one checks to the credit of the personal and private account of said C. H. Ca-

han, Jr., at the said office of the defendant, and permitted said C. H. Cahan, Jr., to appropriate or to withdraw the proceeds of each of the said twenty-one checks, for his own personal use and benefit, and that the proceeds of all or a part of the proceeds of the check hereinbefore described for $1000, dated July 12, 1916, and of the proceeds of numerous of the other checks so appropriated were used by said C. H. Cahan, Jr., and accepted by the defendant in payment of indebtedness owing from said C. H. Cahan, Jr., to the defendant.

XIV. That the defendant collected each of the said checks from said Agents of the Bank of Montreal or from the Guaranty Trust Company of New York, accordingly as said checks were drawn upon one or the other of said banks; and said banks paid said checks to the defendant out of funds of the plaintiff then deposited at said banks and debited the amounts of the said checks in the plaintiff's accounts with said banks. 38

XV. That at all the times when said checks and each of them were deposited with the defendant and placed to the credit of the personal and private account of said C. H. Cahan, Jr., as aforesaid, the defendant had full notice of said wrongful and fraudulent acts of said C. H. Cahan, Jr.; and the defendant knew that the said checks and the funds upon which each of them was drawn were the property of the plaintiff; that said C. H. Cahan, Jr., had no authority to transfer or appropriate said checks or any of them or any of the proceeds thereof for his own personal use and benefit; and that said C. H. Cahan, Jr., in depositing said checks to the credit of his personal and private account with the defendant and in appropriating or withdrawing the proceeds thereof for his own personal use and benefit as afore- 39

40 *Complaint.*

said was thereby wrongfully and fraudulently and in breach of his said trust misappropriating and converting the plaintiff's property to his own use.

XVI. That the defendant, in receiving said checks for deposit as aforesaid, in collecting and receiving the proceeds thereof, and in permitting said C. H. Cahan, Jr., to appropriate or to withdraw such proceeds for his own use and benefit, as aforesaid, thereby knowingly participated with said C. H. Cahan, Jr., in his wrongful and fraudulent misappropriation and conversion of the plaintiff's property as aforesaid, and in his breach of his said trust.

41 XVI. That the plaintiff had no notice or knowledge of the wrongful and fraudulent transactions above described until early in February, 1920; and on February 19, 1920, so soon as the plaintiff had ascertained the actual facts, he gave notice thereof in writing to the defendant.

XVII. That the plaintiff has demanded of the defendant that it repay to the plaintiff the sums so converted and misappropriated as aforesaid, but that the defendant has failed and refused to repay said sums or any part thereof.

WHEREFORE, the plaintiff demands judgment against the defendant for the sum of $31,170, with
42 interest upon the amount of each of said checks from the date of its deposit with the defendant, together with the costs and disbursements of this action.

HUGHES, ROUNDS, SCHURMAN & DWIGHT,
Attorneys for Plaintiff,
Office & P. O. Address:
100 Broadway,
Borough of Manhattan,
New York City.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

AUGUSTUS L. RICHARDS, being duly sworn, deposes and says: That he is a member of the firm of Hughes, Rounds, Schurman & Dwight, attorneys for the plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief and that as to those matters he believes it to be true; that the sources of his information and the grounds of his belief as to the matters therein stated to be alleged upon information and belief are statements made to him by the plaintiff, communications from the defendant and an examination of certain of the checks referred to in said complaint and of certain records relating to the withdrawals of the moneys described therein; that the reason why this verification is made by deponent and not by plaintiff is that plaintiff resides and is outside the State of New York.

AUGUSTUS L. RICHARDS.

Sworn to before me this
27th day of July, 1920.

GEO. M. BILLINGS,
Notary Public,
(Seal) Kings County, No. 69.
Certificate filed Kings Co.; Register's Office No. 2051.
Certificate filed New York County No. 60.
Certificate filed N. Y. Register No. 2021.
Commission expires March 30th, 1922.

46 **Answer.**

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

CHARLES HAZLITT CAHAN,
Plaintiff,

against

EMPIRE TRUST COMPANY,
Defendant.

47 The defendant, Empire Trust Company, appearing herein by Parmly & Stetson, its attorneys for its answer to the complaint of the plaintiff, respectfully shows unto this Court as follows:

FIRST: This defendant denies that it has any knowledge or information sufficient to form a belief as to any of the allegations in said complaint contained in the paragraphs therein designated "I, III, IV, V, VI, VII, VIII, IX and X."

SECOND: This defendant admits the allegations of said complaint contained in the paragraph thereof designated "II."

48 THIRD: This defendant denies that it has any knowledge or information sufficient to form a belief as to any of the allegations in said complaint contained in the paragraph thereof designated "XI," except that this defendant admits that the twenty-one (21) checks enumerated therein were drawn in substantially the words and figures set forth in paragraph XI of the complaint and purported to be signed in the name of the plaintiff by said C. H.

Cahan, Jr., as attorney of the plaintiff and for greater certainty defendant begs leave to refer to the originals of said checks which it prays may be produced upon the trial of this action.

FOURTH: This defendant denies that it has any knowledge or information sufficient to form a belief as to any of the allegations in said complaint contained in the paragraph thereof designated "XII," except that this defendant admits that said twenty-one (21) checks were delivered to defendant.

FIFTH: This defendant denies, on information and belief, the allegations in the said complaint contained in the paragraph thereof designated "XIII," except that defendant admits that after collection, the proceeds of each of said twenty-one (21) checks were placed to the credit of the personal account of said C. H. Cahan, Jr., with the defendant and said proceeds were thereafter withdrawn by said C. H. Cahan, Jr., but this defendant denies that the proceeds or a part of the proceeds of all or any of said twenty-one (21) checks was accepted by the defendant in payment of indebtedness owing from said C. H. Cahan, Jr., to this defendant and this defendant alleges that during all the times mentioned in the complaint the said C. H. Cahan, Jr., was not indebted to this defendant in any sum whatsoever.

SIXTH: This defendant denies, on information and belief, the allegations in said complaint contained in the paragraph thereof designated "XIV," except that defendant admits that defendant collected each of said twenty-one (21) checks from said Agents of the Bank of Montreal or from the Guaranty Trust Company of New York.

52 *Answer.*

SEVENTH: This defendant denies all the allegations in said complaint contained in the paragraphs thereof designated "XV" and "XVI."

EIGHTH: This defendant denies that it has any knowledge or information sufficient to form a belief as to any of the allegations in said complaint contained in the second paragraph thereof designated "XVI," except that this defendant admits that the plaintiff gave notice in writing of the said transactions to the defendant about February, 1920.

NINTH: This defendant admits the allegations in said complaint contained in the paragraph there-
53 of designated "XVII," that the plaintiff has demanded of the defendant that it repay to the plaintiff the sums representing the proceeds of said twenty-one (21) checks and that the defendant has failed and refused to repay said sums or any part thereof, but this defendant denies each and every other allegation contained in said paragraph "XVII."

TENTH: This defendant denies each and every allegation contained in the complaint not hereinbefore expressly admitted or denied.

FOR A FIRST SEPARATE AND DISTINCT DEFENSE.

54 ELEVENTH: This defendant alleges, on information and belief, that prior to the delivery of said twenty-one (21) checks to this defendant, all of these checks with the exception of check #19, as numbered in the said complaint, were "certified" or "accepted" by either the Guaranty Trust Company of New York, or the Agents of the Bank of Montreal, according as said checks were drawn upon one or the other of said banks. That upon delivery of said twenty-one (21) checks to this defendant,

all of said checks with the exception of said check #19 were marked "certified" or "accepted" by the bank upon which each check was drawn. That the plaintiff herein was not during the period covered by the transactions in question a depositor with the defendant and that this defendant had no means of knowing the nature and extent of the authority of the said C. H. Cahan, Jr., as agent of the plaintiff, but that this defendant did know that the Guaranty Trust Company of New York was the depositary bank of the said plaintiff, and that the authority or power of attorney of the said C. H. Cahan, Jr., to act on behalf of the plaintiff was lodged with the Guaranty Trust Company. That in view of the certification of said checks by the Guaranty Trust Company, this defendant relied on said certification as a guarantee of the signature of the maker of said checks by his agent and of the right of the payee of said checks to the funds. That in view of said certification of said checks, this defendant was under no duty to make inquiry as to the signature of the maker of said checks or of the right of the payee to the funds called for thereby. That the same is true of the checks drawn upon and certified or accepted by the Agents of the Bank of Montreal. That this defendant has not been negligent but that the loss to the plaintiff has arisen from the negligence of the said Guaranty Trust Company of New York and of the Agents of the Bank of Montreal and from the negligence of the plaintiff as hereinafter set forth.

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FOR A SEVOND SEPARATE AND DISTINCT DEFENSE.

TWELFTH: This defendant alleges on information and belief, that at all times mentioned in the complaint herein, the plaintiff kept a bank or pass

book in which all sums deposited by him or by his agent and said C. H. Cahan, Jr., were entered by the said Agents of the Bank of Montreal or the said Guaranty Trust Company of New York, at the time said deposits were made and credited to the account of the plaintiff, and that said bank or pass book of the plaintiff was balanced at the end of each of the calendar months during the period from July 1st, 1916, to November 1st, 1918, by charging to the account of the plaintiff the checks drawn against said account during the preceding month and entering in the said book or account the balance to the credit of the plaintiff, and all checks drawn upon the said
59 account of the plaintiff during each of the months included in said period, were at the end of each of said months returned by the said Guaranty Trust Company of New York or the said Agents of the Bank of Montreal to the plaintiff as vouchers for the payment thereof and were received and retained by the plaintiff without objection.

THIRTEENTH: That all of the said twenty-one (21) checks enumerated in the paragraph of the complaint designated "XI," were so returned to the plaintiff and were received and retained by the plaintiff without objection. That no objection was made by the plaintiff to the said account so rendered by the said Guaranty Trust Company of
60 New York and the said Agents of the Bank of Montreal to the plaintiff on the 1st day of each month included in said period from July 1st, 1916, to November 1st, 1918, or to the checks returned therewith as vouchers as aforesaid and no error was pointed out therein and no larger amount was claimed to be due to the plaintiffs from the said Guaranty Trust Company of New York or the said Agents of the Bank of Montreal than appeared by

said bank of pass book of account until on or about February, 1920. 61

FOURTEENTH: Upon information and belief that the plaintiff at all times aforesaid had notice or knowledge either actual or constructive, of all and singular said accounts so rendered by the said Guaranty Trust Company of New York or the said Agents of the Bank of Montreal to the plaintiff, and of all and singular, the deposits and payments aforesaid at the times that they were respectively made or within a reasonable time thereafter, and of the fact that said C. H. Cahan, Jr., was withdrawing the several sums of money hereinbefore referred to 62
upon checks signed by him as agent of the plaintiff and payable to his own order or to the order of this defendant. That an examination by the plaintiff of the account and acts of the said C. H. Cahan, Jr., and an examination by the plaintiff of said accounts, checks, pass books and balances would at all times have disclosed to the plaintiff all and singular, the acts and matters set forth in the complaint. That the plaintiff negligently and carelessly conducted his business affairs and negligently supervised the aforesaid acts, matters and transactions and negligently failed and omitted to point out or call to the attention of the said Guaranty Trust Company of New York or the said Agents of 63
the Bank of Montreal or the defendant the alleged want of authority of the said C. H. Cahan, Jr., as agent as stated in the complaint and the alleged errors in honoring and paying drafts drawn upon said account as stated in the complaint, that the defendant was deprived of any and all opportunity to correct said alleged errors, if any, and of all opportunity to prevent the collection of further sums and drafts in and upon said account and

was deprived of all its rights, remedies and cause or causes of action to recover from said C. H. Cahan, Jr., and others any property or sums in the premises.

FIFTEENTH: Upon information and belief, that within a short time prior to the appointment of C. H. Cahan, Jr., as the agent and attorney of the plaintiff, as alleged in the complaint herein, said C. H. Cahan, Jr., had, to the knowledge of the plaintiff, been guilty of various acts of misappropriation of moneys entrusted to him, and was known to the plaintiff to be unreliable and untrustworthy; and
65 that plaintiff negligently appointed said C. H. Cahan, Jr., his agent and attorney, as alleged in the complaint, and that any loss the plaintiff may have sustained in regard to the matters and transactions alleged in the complaint, was caused by the aforesaid negligence of the plaintiff, and not by any act or ommission of the defendant.

SIXTEENTH: That the defendant was thereby damaged in the sum of Thirty-one thousand one hundred and seventy and 00/100 ($31,170.00) Dollars with interest; that the defendant was not guilty of any act, neglect or omission contributing in whole or in part thereto.

66 FOR A THIRD SEPARATE AND PARTIAL DEFENSE

SEVENTEENTH: This defendant reiterates and realleges all the allegations contained in paragraphs Twelfth, Thirteenth, Fourteenth and Fifteenth of this answer with the same force and effect as if herein set forth at length. By reason thereof, defendant has been damaged in the sum of Thirty-one thousand one hundred and seventy ($31,170.00) Dollars with interest, or some part thereof; that de-

fendant was not guilty of any act, neglect or omission contributing in whole or in part thereto.

FOR A FOURTH SEPARATE AND DISTINCT DEFENSE.

EIGHTEENTH: The defendant alleges, on information and belief, that at the time the said 21 checks referred to in the complaint were collected by the defendant from the said Guaranty Trust Company of New York and the said agents of the Bank of Montreal, plaintiff had no legal title to any money in either of said banks; that under the agreement between plaintiff and said banks, the title and ownership of all moneys deposited in said banks 68
became immediately upon their deposit vested in said banks, and that plaintiff had merely a credit with said banks to the amount of said deposits.

NINETEENTH: That if, as alleged in paragraph IX of the complaint, the said powers of attorney lodged with the said Guaranty Trust Company of New York and the said agents of the Bank of Montreal, as alleged in the complaint, did not authorize the said C. H. Cahan, Jr., to draw the said checks referred to in the complaint, such fact was known to the said Guaranty Trust Company of New York, and the said agents of the Bank of Montreal, with whom the said powers of attorney were lodged; and the payment of said checks by said banks was 69
wrongful and improper, and the amounts of said payments could not be charged against plaintiff's credit with the said banks.

TWENTIETH: That the money paid by the said banks to the defendant upon its presenting the said checks for collection from the said banks, was not the property of the plaintiff, but was the property of the said banks, and that any rights that may

exist to recover said money belong to the said banks and not to the plaintiff.

FOR A FIFTH SEPARATE AND DISTINCT DEFENSE

TWENTY-FIRST: This defendant alleges, on information and belief, that there is another action pending in the Supreme Court of the State of New York in and for the County of New York in which the said C. H. Cahan is plaintiff and the said Guaranty Trust Company of New York is defendant, and that in said action, the said plaintiff seeks to recover from the said defendant the sum of Ten thousand
71 one hundred and fifty ($10,150) Dollars representing the proceeds of checks numbers 12, 13, 14, 15, 16, 17, 18 and 21 as enumerated in the paragraph of the complaint herein designated XI. That in the event that the plaintiff C. H. Cahan recovers a judgment in said action against the defendant therein the said Guaranty Trust Company of New York, the said C. H. Cahan as plaintiff herein will not be entitled to recover a judgment against this defendant in respect to the said eight checks enumerated above and that the trial of this action should be postponed until the said action pending in the said Supreme Court shall have been tried and concluded.

WHEREFORE, this defendant demands judgment
72 dismissing the complaint together with the costs and disbursements of this action.

PARMLY & STETSON,
Attorneys for Defendant,
Empire Trust Company,
42 Rector Street,
Borough of Manhattan,
New York City

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

FRANCIS HENDERSON, being duly sworn, deposes and says; that he is the Vice President of the Empire Trust Company, the defendant herein, and that the principal office of said company is at No. 120 Broadway, in the Borough of Manhattan, City of New York; that he has read the foregoing answer and knows the contents thereof and that the same is true of his own knowledge except as to those matters therein stated to be alleged upon information and belief and that as to those matters he believes 74
it to be true; that the reason why this verification is made by deponent and not by defendant is that defendant is a domestic corporation and deponent is the Vice President thereof and that he has derived his knowledge of the facts above set forth from information acquired by him in the performance of his duties as Vice President of said company.

FRANCIS HENDERSON.

Sworn to before me this
20th day of November, 1920.

JAMES HYSLOP FARRELL,
Notary Public, 75
(Seal) Kings County.
Kings Co. Register's No. 1106.
Kings County Clerk's No. 219.
Certificate filed in New York Co.
Clerk's No. 347; Register's No. 1362.
Commission expires March 30, 1921.

76 **Judgment.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

CHARLES HAZLITT CAHAN, Plaintiff, against EMPIRE TRUST COMPANY, Defendant.	Dated: January 12, 1925. L 22-266, 1920.

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The issues in this action having been duly brought on for trial on the 19th day of December, 1923, before Honorable Francis A. Winslow, District Judge, duly assigned and sitting in the United States District Court for the Southern District of New York, and a jury of one juror duly impaneled and sworn in accord with the consents of attorneys for both the plaintiff and the defendant to try the case by a jury of one juror; and the allegations and proofs of the plaintiff and of the defendant having been considered on that day and on the 20th day of December, 1923; and the plaintiff having moved at the close of all the evidence for the direction of a verdict for the plaintiff; and the defendant having likewise moved for the direction of a verdict for the defendant; and the Court having thereupon reserved its decision, and having thereafter on the 22nd day of December, 1924, at an adjourned session of the original trial and in open court directed a verdict for the plaintiff for Thirty one Thousand One Hundred Seventy Dollars ($31,170.00), being the aggregate amount of the checks involved in this action but without interest on the amount of said checks

or any of them, and by such direction of the Court a verdict having been rendered for the plaintiff for Thirty-one Thousand One Hundred Seventy Dollars ($31,170.00) and the defendant having taken an exception to the direction of such verdict and to the verdict as directed, and the plaintiff having taken an exception to the direction of the Court in so far as it failed to direct the inclusion in the verdict of interest on the amounts of the checks as demanded in the complaint and to the verdict in so far as it failed to include such interest,

Now, on motion of Rounds, Schurman & Dwight, attorneys for the plaintiff, it is 80

ADJUDGED, that the plaintiff, Charles Hazlitt Cahan, recover from the defendant, Empire Trust Company, the sum of Thirty-one thousand one hundred seventy dollars ($31,170.00), being the amount of said verdict, and that the said plaintiff also recover from the said defendant, interest at six per centum (6%) per annum on the said sum from the 22nd day of December, 1924, to the present date, being One Hundred Nine and 9/100 Dollars ($109.09), and that the said plaintiff recover from the said defendant the further sum of Thirty-five Dollars five cents ($35.05), taxable costs and disbursements in this action; amounting in all to the 81 sum of Thirty-one thousand three hundred fourteen Dollars fourteen cents ($31,314.14), and that the plaintiff have execution accordingly.

Judgment signed and entered this 12th day of January, 1925.

ALEX. GILCHRIST, JR.,
Clerk.

82 **Bills of Exceptions.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

CHARLES HAZLITT CAHAN,
Plaintiff,

vs.

EMPIRE TRUST COMPANY,
Defendant.

Before:
Hon. FRANCIS A. WINSLOW, J., and a Jury of One.

New York, December 19, 1923.

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APPEARANCES:

ROUNDS, SCHURMAN & DWIGHT, Attorneys for Plaintiff; CHARLES E. HUGHES, JR., THOMAS L. ENNIS, of Counsel.

PARMLY, STETSON & WOODWARD, Attorneys for Defendant; VAN VECHTEN VEEDER, WILLIAM P. ALLEN, WILLIAM L. WOODWARD, of Counsel.

(By mutual consent of counsel for the respective parties in open court, the case is tried before a jury of one.)

(Whereupon, a jury of one was impaneled and duly sworn.)

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Mr. Veeder: If your Honor please, I desire to withdraw all the separate defenses, five in number, as stated in the answer.

The Court: What page are they on?

Mr. Veeder: Folios 9 to 27, numbered paragraphs eleventh to twenty-first, both inclusive.

The Court: This copy of the pleadings does not seem to be foliosed, so if you will give me the paragraphs?

Mr. Veeder: Beginning with the eleventh, numbered paragraph 11. Is that folioed in your copy?

The Court: No. That is on the third page?

Mr. Veeder: Yes; the eleventh to the twenty-first; that is, right down through the rest of them to the end, inclusive. So I amend the answer by striking out the five defenses numbered paragraphs eleventh to twenty-first, folios 9 to 27, both inclusive.

We have entered into a written stipulation to try the case before a jury of one, and that each side, at the conclusion of the evidence will move for a directed verdict. I now file the written stipulation to that effect, with the clerk. 86

STIPULATION.

IT IS STIPULATED by the parties hereto that this case shall be tried by a jury of one and that at the conclusion of the evidence each party shall move for a directed verdict.

ROUNDS, SCHURMAN & DWIGHT,
Attorneys for Plaintiff.

PARMLY & STETSON,
Attorneys for Defendant.

Mr. Hughes: I assume, if your Honor takes the cross-motions for a directed verdict at the conclusion of the case, your Honor will set a date for briefs and argument on those motions 87

The Court: Yes. I assume there is a very nice question involved, and I shall probably want briefs and argument.

Mr. Hughes: We assumed so, and that being the case, we felt that it would be better to prepare our brief after the testimony was in, and we could see exactly how the case shaped up.

88 *Bills of Exceptions.*
Charles Hazlitt Cahan—Plaintiff—Direct.

The Court: Very well.

Mr. Hughes: Does your Honor care to have an outline of the case before I put Mr. Cahan on the stand?

The Court: Yes. I have gone through the pleadings only very superficially, and shall be very glad to have some additional light in the way of a statement by counsel.

(Whereupon, Mr. Hughes made an opening statement to the Court, followed by Mr. Veeder.)

The Court: I think I now have a fair idea of the
89 issues, and you may proceed.

CHARLES HAZLITT CAHAN, the plaintiff, called as a witness in his own behalf, being duly sworn, testified as follows:

Direct examination by Mr. Hughes.

Q. Mr. Cahan, where do you reside? A. At the City of Montreal, Quebec, Canada.

Q. And you are a citizen of what nation? A. I am of British citizenship.

Mr. Hughes: I assume, if your Honor please, that Mr. Cahan's testimony is compe-
90 tent as to his citizenship. He has passports at the hotel, if you wish to see them.

The Court: I assume so, unless objection is made.

Q. You are a citizen of Great Britain? A. Yes.

Q. And a resident of Montreal? A. We say we are citizens of the British Empire.

Mr. Hughes: I accept the correction.

The Witness: With residence in Canda.

Q. Yes. In 1915, 1916 and 1917, did you have occasion to make your headquarters in New York? A. Yes, for special services in connection with the war.

Q. Will you describe as fully as you may think necessary, the circumstances under which you were in New York during that period? A. I am a Barrister and Kings Counsel. I was one of the attorneys, for some years, for the War Department and the Admiralty, my duties being confined to this particular coast, with headquarters at Halifax. After the war broke out I went from Montreal to London in connection with some matters there of a legal nature, affecting Canadian securities, and while 92
there, representatives of the British Government asked me if I would not be willing to go back and attend to some war services for them. It was pointed out to me that the British Government was guaranteeing the payment in America of very extensive munitions which were being or about to be manufactured in America for the Russian Government; and contracts to the extent of about $90,000,000 were given to the Canadian Car & Foundry Company, Limited, and I was asked to go ostensibly as counsel for the Canadian Car & Foundry Company, Limited, but really to look after the interests of the British Government, which was guaranteeing payment. That was how the matter arose. And early 93
in January, 1915—rather, the last of January, 1915, I came from London here to New York for that purpose. In the autumn of 1915, the Canadian Car & Foundry Company had become heavily involved—involved to the extent of $30,000,000 or $40,000,000—and was unable to find the credit, and was about to go or was being pressed into insolvency. I put up to the British Government again that this would bring down a large number of factories in the

United States, and America was not then in the war, and I thought it would make a very bad impression; so under their instructions—the British Government—we formed a company—a New York company, called an agency for the Canadian Car & Foundry Company, so as to avoid too much suspicion, but which was really a trust in which the British and Russian Governments appointed me chairman of the board of directors, the directors being named by the two governments, to take over all these contracts to the extent of about $90,000,000, the British Government furnishing money to carry it out, and we carried out those contracts until 1917,
95 when in April of that year, 1917, the American Government having declared war, or having come into the war by declaration, we began closing up that work and the factories—a number of them—I think, the principal ones which had been engaged throughout the United States in the manufacture of munitions for the Russian Government, and they were taken over on contracts for services in connection with the American Government. We closed up fairly well here about August, 1917, and I went back to Montreal, being called here from time to time as various settlements came up, and subsequently called to Washington, where I gave some assistance there in connection with the American Government.
96 Then I had, early in 1918, some deaths in my family, which broke me pretty well, and I was ill. I then went, for the British Government again, and partly for the Bank of Montreal, to San Francisco; I had a dual mission to carry out—a mission for the Bank of Montreal, and also in connection with the Italian—not the Italian, but the Indian espionage, which sent me there and into British Columbia, and I came back from there in July, and I was appointed then Director of Public Safety for Canada—I think

it speaks for itself—in charge of espionage in that country and revolutionary movements in Canada, in connection with the foreign secret service of the United States, with which I was in communication, and the British secret service; and I remained there until, I think, February, 1918, and the Armistice having then been declared, and having settled the affairs of that department fairly well——

Q. (Interposing) In February, 1919, you mean? A. When was the Armistice?

Q. November, 1918. A. Yes, February, 1919, I should have said. Then I went with the British Government again, in settling and adjusting their 98
contracts in connection with a branch of the British War Office, in America. The contracts which I was arranging settlement of were large contracts for the supply of horses and mules and other equipment from America for that department.

Mr. Veeder (interposing): If Mr. Hughes will undertake to point out the materiality of all this, I shall not object.

Mr. Hughes: It is simply laying a foundation for the giving of these various powers of attorney, Judge Veeder.

The Court: Of course, gentlemen, in the absence of a jury of twelve, I assume that even though there might be some question of 99
relevancy, no particular harm is done, and it may give us a more clear picture of the facts that antedated the transactions that we have in issue here.

The Witness: Judge, I will restrict it. A lawyer, you know, is the worst witness in the world.

Mr. Veeder: I know.

The Court: It is very interesting too, I think, if Judge Veeder will not urge his objection.

Mr. Veeder: No.

The Court: Particularly from a member of our learned profession—I think we shall be very glad to hear the situation.

Mr. Hughes: Then, if you will proceed, please.

The Witness: Then, I was ill. I completed that work—this is 1919——

101 Q. Yes, we had reached 1919. A. I completed that work pretty well by July, and in the hot weather I was taken ill, and my wife took me away, and I came back late—I have forgotten when, but I was in very poor health.

Q. Now, Mr. Cahan, in view of your various absences, which you have briefly described, in this war work, did you find it advisable to give various powers of attorney in any connection? A. I did. I had an account for some years—a small account with the agency of the Bank of Montreal, in New York, and then I was using it simply to pay expenses when I was down in New York. They would give no interest on deposits——

102 The Court (interposing): You mean personal expenses?

The Witness: Yes, personal expenses.

The Court: Not expenses in connection with your official activities?

The Witness: No. I paid my personal expenses largely. Sometimes I received it back, but otherwise I would draw on my personal accounts for it; and I stayed here making my headquarters at the Manhattan Hotel, until October, 1915, I think. I think

it was in the month of October; and then I was there under the secret service—the secret service and espionage—and some of my papers were missing from there, and so I took a small apartment up on Broadway, where I lived, when I was in New York, until August, I think, 1917. Then I closed up the apartment, and when I came back I went to the Manhattan Hotel again. During that time I was in Europe, back and forth.

Q. Now, coming down to the powers of attorney—A. (Interposing) Oh, and I had also opened an account with the Guaranty Trust Company here, under these circumstances: that I had a certain amount of money coming in to me here; I think it came partly through the sale of some American bonds which I had, and the agents of the Bank of Montreal would not pay me any interest, so I went to a friend of mine, who was vice-president of the Guaranty Trust Company, and asked him if I could open an account with the Guaranty Trust Company, and I did. I opened an account there in which I paid in what I regarded as sort of a savings bank account, where I was receiving interest at the rate of three per cent.; so that I used to draw money from the agents of the Bank of Montreal, when it began to accumulate, and paid it over to the Guaranty Trust Company. 104 105

Q. That is, you had two bank accounts here in New York during that period? A. Yes.

Q. And only two? A. That was all. Well, of course, I was drawing, as chairman of the board—

Q. (Interposing) No; I mean your personal accounts. A. Yes, those were my personal accounts.

Q. You had only two personal bank accounts? A. Yes.

Q. One at the agents of the Bank of Montreal, which you used as a general checking account for the payment of your personal expenses? A. Yes.

Q. And the other at the Guaranty Trust Company, which you regarded, as you have testified, as more or less of a savings account? A. Yes.

Q. And in which you deposited from time to time large sums, mostly drawn from the agents of the Bank of Montreal, is that correct? A. Yes.

Q. Now, coming down to the powers of attorney concerned in this case, I understand you have testified generally that in view of your absences, you found it convenient to give certain powers of at-
107 torney? A. If I remember correctly— and I think I am perfectly sure, although I have not had an opportunity of discussing this with you for a long time, I gave a power of attorney in September, 1916, to my son, in connection with my account with the Guaranty Trust Company of New York.

Q. Is this document the original power (handing paper to witness)? A. Yes, this is the power dated September 21, 1916; that is my signature, and that was witnessed in the way it purports to be witnessed.

Mr. Hughes: I ask to have this marked for identification—this power of attorney.

108 (Paper marked Plaintiff's Exhibit No. 1 for Identification.)

The Witness: The battle of Courcelette took place about the 14th or 15th of that month, and I had three boys in it—the family—and I received about the 17th or 18th—I believe that I received a cable from one of the surgeons saying that one of my boys—that he would probably live if I could—until I could get there to see him. I could not find

out anything about the other two boys. Of course, I was very much upset, and I left on Saturday of that week to go to France, and I remember before going signing the power of attorney—I think that is it, but you can compare it with the other—that I signed a power of attorney to give my son power to draw on the Guaranty Trust.

Q. That was the first power you had given? A. Yes.

Q. To draw on the Guaranty Trust? A. Yes. I did not know whether I could get funds through the Bank of Montreal to the particular spots in France 110
that I might have to visit, and I made up my mind that I was going to bring the boys back, whether they were dead or alive, and so I wanted to have ample leeway in getting funds to France, if I needed funds there.

Q. That was the occasion of your executing this instrument giving C. H. Cahan, Jr., authority in connection with your account? A. Yes.

Q. With the Guaranty Trust Company? A. Yes.

Q. And do I correctly understand that there had, previous to this date, been no power of attorney in his hands to draw on the Guaranty Trust? A. No, there was no other power except that, on the Guaranty Trust Company. There was at that same 111
time outstanding a power of attorney which—I think it was for two months—it had been outstanding for about a month, with the agents of the Bank of Montreal.

Q. Coming to the period that is concerned in this action, was a power of attorney given by you to your son in connection with your account with the agents of the Bank of Montreal, on May 29, 1916 (handing paper to witness)? A. Yes, this is a copy compared

by me with the original. I see those are my figures at the top.

Mr. Hughes: Then I will ask that this be marked for identification, and will state that we have served on the agents of the Bank of Montreal a subpoena duces tecum to produce the original of this document, and that if that arrives, we will offer the original in evidence, and if it does not, we will submit that that lays the basis for the introduction of secondary evidence.

113 (Paper marked Plaintiff's Exhibit No. 2 for Identification.)

Q. This power of attorney, dated May 29, 1916, running for two months—that was the period, two months? A. Yes.

Q. And then on July 29th, at the expiration of those two months, was another power of attorney given to your son? A. Yes.

Q. And that is a copy, is it (handing paper to witness)? A. This power of attorney of May 29, 1916, if I remember correctly, was given when I was leaving New York to go to London, when I was called there in connection with some of this. I remember I was there in June, and I gave that power
114 because I had personal expense to pay, you know. I had my secretary here, and I had other personal expenses in New York, and I gave that power of attorney then. This power of attorney of July 29, 1916, comes practically at the end of that period. When that power of attorney came to an end, I was again just about leaving New York, and off and on I renewed it, as you see.

Q. Then, on October 30, 1916, did you give a further power of attorney with reference to your

115

account in the agency of the Bank of Montreal (handing paper to witness)? A. Yes. If Saturday was the 28th or 29th of October, I returned to New York from my trip to France, and I brought a boy—got a couple of girls from the casualty station there, and I brought him on a stretcher. You will excuse me; my nerves are badly broken. I got back on that date, with one of the boys, and my son came to me and told me the other power of attorney had expired, and wanted to know whether he should draw on the Guaranty Trust for the expenses—the hospital, etc., and I said, "No, I will give you another power of attorney, because I want you to draw it on the agents of the Bank of Mon- 116
treal," and I gave him this power of attorney, renewing it so that he could draw on the agents of the Bank of Montreal, and that power was given the day after I returned.

Q. And that power, I understand, is unlimited in time? A. Yes.

Mr. Hughes: I ask to have the power of attorney with reference to the agents of the Bank of Montreal on July 29, 1916, marked Plaintiff's Exhibit No. 3 for Identification, and the copy of the October 30th power of attorney, Plaintiff's Exhibit No. 4 for Identification. As to all of these, the originals 117
have been subpoenaed, and either they or copies will be offered in evidence, as the case may be.

(Papers marked respectively Plaintiff's Exhibits Nos. 3 and 4 for Identification.)

Q. Mr. Cahan, were there, during the times covered by the powers of attorney as you have just testified, any other powers of attorney outstanding

in favor of C. H. Cahan, Jr., with respect either to the account in the agency of the Bank of Montreal or the account in the Guaranty Trust Company? A. No, nor any other accounts at all. There was no other power upon any other bank or banking accounts. Those were all.

Q. So that these documents, copies of which have been marked for identification, constituted the sole authority of C. H. Cahan, Jr., with respect to these bank accounts, did they? A. Yes. He had no other powers for any other purposes whatsoever.

Q. Now, Mr. Cahan, at a later time did you dis-
119 cover that your son, C. H. Cahan, Jr., had used your bank accounts fraudulently? A. Yes. May I correct——

Q. (Interposing) Yes. A. (Continuing) After I was here in August, 1917, I went back to Montreal, and was taking up other work, and coming here occasionally, and to Washington cleaning up, and then doing some other work for the Canadian Government, and I gave him a power of attorney on my bank account with the Bank of Montreal at Montreal, but that was given in August, 1917, after I had taken up my nominal residence again in Montreal.

Q. And that had reference to the Bank of Montreal in Montreal? A. Yes.

120 Q. And not to the agency of the Bank of Montreal in this city? A. No.

Q. I see. A. Now, what was your question?

Q. The question I asked was whether at a later time, and, if so, when, you discovered that your son, C. H. Cahan, Jr., had fraudulently dealt with your bank accounts? A. On the morning of December 27, 1919, I found it out. I had received a note before—the night before——

Q. (Interposing) That is, the night of the 26th? A. The night of the 26th after I arrived home for

my dinner, from the manager of the Bank of Montreal at Montreal, asking to see me very especially.

Q. That was the manager of the Bank of Montreal in Montreal? A. Yes.

Q. And not the New York agency? A. No, he was the manager of the Montreal City branch of the Bank of Montreal.

Q. And you were then in Montreal? A. Yes.

Q. And your son was in Montreal? A. Yes.

Q. Just describe the circumstances under which you made this discovery. A. That bank had always called me in as counsel in very important matters, and I received this note about dinner time, saying he wanted to see me very especially, and I thought it was in connection with some banking business, that someone was in trouble; and after dinner I rang up my son, got him on the phone, and I said, "The Bank of Montreal is asking me to see them very especially; do you know what it is?" Oh, I called up the manager, and the manager was out of his house, and my son replied, "Yes." He said he knew what it was; that he would be right over and see me, and I waited, and he did not come, and I went over to his room, and he had just gone out, they said, and I thought he must have passed me on the street, so I went back, and he did not come, and then I thought that he had probably gone to take it up—you see, to look into it, knowing what it was; and I made no further alarm that night. The next morning I went into the bank, and the bank manager said to me—he said, "Mr. Cahan, your account is overdrawn $24,000." I thought I had about $70,000 or $75,000 to my credit.

Q. Was this your personal account? A. Yes, this was my personal account; and then he began to show me some material, and I saw that things were wrong, and I learned then for the first time that

he had an account with the Home Bank of Canada —that my son had a personal account with the Home Bank of Canada, and they told me that there was something wrong with the Corporation Agency's account.

Q. That was a corporation in which you were a large stockholder? A. I was a stockholder and president of that.

Q. And your son, C. H. Cahan, Jr., was a director? A. Yes, I put him on as a director, owing to my being away so much. I went to the Merchants Bank of Canada and found out things were wrong
125 there, and then I went to see the manager of the Home Bank, and then I found out what was wrong. I immediately took every step possible to find him, but could not find him, and I subsequently found he had disappeared that night before 12 o'clock, because at my offices is a register at night, and I found by this register that he must have left the hotel soon after I telephoned him, and he went to the offices and opened them up and took away some things from there, and I have never found out since where he is. I have heard rumors——

Q. (Interposing) You have never seen him since that time? A. No, I have never seen him since that time.

Q. And you do not know where he is now? A.
126 I have no idea.

Q. Now, Mr. Cahan, I understand that you discovered at that time—I am speaking only generally now—that he had fraudulently diverted funds of yours on deposit both with the Bank of Montreal in Montreal and the agents of the Bank of Montreal here in New York, and the Guaranty Trust Company of New York, and applied those funds to his own uses? A. When I found that everything was gone, as I told you——

Mr. Veeder (interposing): Of course, I cannot tell how the answer will be, but certainly the question calls for a mere conclusion. Will you repeat the question?

The Court: I think it does.

Mr. Hughes: Yes, I think it does. If there is objection, I will concede that the question should be reframed.

Q. I will state it this way: did you then discover that with respect to all three bank accounts—your account in the Bank of Montreal at Montreal, your account with the agency of the Bank of Montreal here in New York, and your account with the Guaranty Trust Company—there were withdrawals that were connected with no purpose of your own? 128

Mr. Veeder: I object to that, your Honor. I have no objection to his stating what he discovered, but let him state it himself.

Mr. Hughes: The objection is that it is leading?

Mr. Veeder: Yes.

The Court: Just state generally what you discovered regarding these accounts.

The Witness: Before noon that day I wired the Guaranty Trust Company to know how my account stood there. I have the telegrams; and the reply came back that it was, if I remember correctly, something about $20 to my credit; and I wired to the agents of the Bank of Montreal at New York, to see what was to my credit there, and the reply came back that it was some small amount. I have the telegrams there. It was something about $300. And I found out from them subsequently by correspondence— 129

those amounts were confirmed, that all that remained to my credit was about $20 in the Guaranty Trust Company, and about $300 at the agents of the Bank of Montreal. I then had to break into my own safe, and I found out also that securities as well as cash of the Corporation Agency's, Ltd., was gone.

Q. Do I correctly understand that if things had been as they should have been, the balances to your credit with the agency of the Bank of Montreal and the Guaranty Trust Company and the Bank of Montreal in Montreal would have been very much
131 larger? A. Of course——

Mr. Veeder (interposing): I must object to that, your Honor.

The Court: Yes. I believe that the burden is upon you to show that these checks were drawn and that the funds were diverted.

Mr. Hughes: Of course I am coming to these particular checks right away, your Honor. This is simply a general preliminary question. I did not intend that it should be a conclusion as to all of the facts in this action, but I will withdraw it, and bring it right down to the checks in issue in this case.

The Court: Yes.

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Q. I will ask you first, generally, Mr. Cahan, had you any knowledge at the times of which we have been speaking, that your son, C. H. Cahan, Jr., had an account in the Empire Trust Company? A. No, I never knew it until after—about the middle of January I discovered a private box——

Mr. Veeder (interposing): What year, Mr. Cahan?

The Witness: That is, about January, 1920; that is, after he had left. There was some controversy in that other suit about the date, but it was about the middle of January, I think, at least, or perhaps later, I discovered in an iron box which he had put in the vaults of the Ritz-Carlton Hotel in Montreal—they called my attention to it; they knew of his disappearance, and we opened it in the presence of the manager, and then I found a lot of these checks, which I—may I describe them as fraudulent checks, generally?

Mr. Veeder: Canceled checks? 134

The Witness: Fraudulent checks.

Mr. Veeder: I object to that.

The Court: Yes; I suppose the word "fraudulent" is objectionable.

Mr. Veeder: Yes.

The Court: Just describe them as canceled checks.

Mr. Veeder: May I suggest that you refer to them as canceled checks drawn on those banks here in New York by your son?

The Witness: Yes, and I found a number of checks purporting to have been drawn on my account at the Guaranty Trust Company in New York, and at the agents of the Bank 135
of Montreal in New York, of which I had never known before that date, and which conveyed to me the suggestion—which bore on their face that they were deposited through the Empire Trust Company.

Mr. Veeder: I object.

The Court: Yes. You discovered these checks drawn on these two banks of which

you had theretofore had no knowledge—the canceled checks?

The Witness: Yes.

The Court: Now, can we have them identified?

Mr. Hughes: Yes.

The Court: How many are there?

Mr. Hughes: There are twenty.

The Court: Just say, "I hand you twenty checks and ask you to identify those as the checks to which you have referred."

Mr. Hughes: Well, there are other checks. These are the ones concerned in this particu-
137 lar suit. His answer was a general answer.

The Court: I think if you will get right down to the issue and show him the specific checks——

Mr. Hughes (interposing): Yes, I will do that.

Q. Mr. Cahan, I show you twenty checks and ask you whether those are amongst the checks which you discovered, and of which you had not previously known, according to your testimony just given (handing papers to witness)? A. Yes, those checks were among the checks that I discovered in that box at the Ritz-Carlton Hotel in Montreal, and I
138 had never known of any or either of these checks before, and the signature, C. H. Cahan, Jr., signing as my attorney in drawing these checks in my name, is the signature of my son, C. H. Cahan, Jr.

Mr. Hughes: I ask that the portion of the answer "signing as my attorney" be stricken out.

Q. And instead I ask you whether that part of the signature to these checks which is written in

ink, "C. H. Cahan, Jr.," is the handwriting of C. H. Cahan, Jr., and whether the ink signature on the back of some of those checks, "C. H. Cahan, Jr.," is in the handwriting of C. H. Cahan, Jr., your son (handing papers to witness)? A. The signature in the drawing of the check is in the handwriting of my son, C. H. Cahan, Jr. That is his signature in each case. On the back of the checks the signature, "C. H. Cahan, Jr.," so far as it appears, is in his handwriting, and is his signature in each case, with the exception of three checks. I do not think that any of those endorsements are C. H. Cahan, Jr.'s.

140 Q. The endorsements as to which you have just stated a doubt relate to the check numbered 435 of September 20, 1916, on the agents of the Bank of Montreal— A. (Interposing) For $3,500.

Q. Yes; check No. 449, dated September 30, 1916, on the agents of the Bank of Montreal for $1,000? A. Yes.

Q. And check No. 569, January 2, 1917, on the agents of the Bank of Montreal in the amount of $1,000? A. Yes. With respect to those three checks I do not think that the name "C. H. Cahan, Jr.," as it appears in the endorsement here, is his handwriting or his signature.

141 Mr. Hughes: I offer these checks in evidence, and ask that they be marked Plaintiff's Exhibits Nos. 5, 5-A, 5-B, 5-C, etc. There are twenty of them altogether.

(Twenty papers marked respectively Plaintiff's Exhibits Nos. 5 and 5-A to 5-S inclusive.)

Q. Mr. Cahan, except for the powers of attorney as to which you have given testimony, and which,

or copies of which, have been marked for identification, and without conceding or testifying one way or the other to the legal conclusion as to whether those powers of attorney gave any authority, that being a question of l. w, except for those powers of attorney, did you ever authorize or instruct your son, C. H. Cahan, Jr., to draw any of those checks which have just been marked in evidence? A. No.

Mr. Veeder: I have no objection. It would not be binding on us anyway. Go ahead.

Mr. Hughes: Before I come to that question, if it may be considered that the stenog-
143 rapher interpolates this before that last question and answer—the twenty-first check we have not got; it has not been found. As to that the complaint alleges—the complaint in paragraph eleven describes these checks—twenty-one of them in order. The checks that have been introduced in evidence correspond to the first twenty of them, and the complaint thus describes the twenty-first check: "Check dated October 15, 1918, for the sum of $2,400, drawn upon the Guaranty Trust Company of New York in the City of New York, payable to the order of C. H. Cahan, Jr., or the defendant," and the defendant's answer——

144 The Court (interposing). Admits the execution and drawing of that check?

Mr. Hughes: In paragraph third thereof.

Mr. Veeder: Yes, that is admitted.

The Court: A check drawn either one of two ways——

Mr. Veeder (interposing): We got the entry from the bank's books, and it shows that. As to how it was drawn, we do not know.

Mr. Hughes: And it is admitted in the answer that that check was drawn and charged against the account of the plaintiff with the Guaranty Trust Company.

Mr. Veeder: Yes.

Mr. Hughes: So that check may be regarded as also proved; and then the question that I just asked before that, and the answer to it.

By Mr. Hughes.

Q. Mr. Cahan, again without asking you, and disclaiming any intention in the form of my question to state any legal conclusion with respect to the construction of these powers of attorney, were any of these checks drawn for any purposes of yours? 146

Mr. Veeder: If he will answer that yes or no, I shall not object to it.

The Court: Counsel says that if you answer that yes or no he will not object to the question.

The Witness: No.

Q. And you have already testified, I believe, that you had no knowledge of the drawing of any of these checks until some time about January, 1920? A. I had no knowledge before January, 1920.

Q. You kept check books, I suppose, in connection with your accounts in the Guaranty Trust and the agency of the Bank of Montreal? A. Yes. 147

Q. Will you describe or will you state whether in those check books any stub appeared on which there was any—will you state whether in those check books there was any stub on which appeared any notation of the drawing of a check corresponding to any of the twenty-one checks which have just

been offered in evidence or described? A. There was not a single notation in the check book of any of these checks.

Mr. Veeder: Well, of course, the defendant can hardly be bound by any notation in a check book. How can we be bound by any notations that might be made in a check book?

Mr. Hughes: It is simply one item of evidence as showing fraud. That is, that the agent had not entered these checks in the check book.

149 The Court: I suppose it might show the intent on the part of the attorney-in-fact as a circumstance.

Mr. Hughes: Yes.

The Court: Are the check stubs available?

Mr. Hughes: They are here, if your Honor wants them.

The Witness: This may not be competent evidence, but some of the checks of these numbers are entered in some cases.

Q. That is, in some cases there will be a check numbered, we will say, for the sake of illustration, 435? A. No; check No. 435 does not appear in the check book at all, but if you will take check No. 150 415, that is a check dated September 1, 1916, for the sum of $2,000, and the check stub numbered 415 you will see from the stub book enters, "New York Telephone Company, $9.27."

Q. That is, in the stub book there appears a check numbered 415? A. Yes.

Q. To the order of the New York Telephone Company? A. Yes.

Q. For $9.27? A. Yes.

Q. Which takes the place of check No. 415 in that stub book? A. Yes.

Q. But the stub book contains no reference to a check numbered 415, dated September 1st to the order of C. H. Cahan, Jr., for $2,000? A. No, absolutely not. The entry in the stub book for check No. 415 is "New York Telephone Company, $9.27." I can either produce the stubs, or I can go through my notes here and show you.

Q. Unless defendant's counsel desires more particular testimony, or the production of the stub books, is it the fact that with respect to each one of these checks the check book either contains no stub bearing a check of the numbers and in the amount 152
hitherto described, or contains a notation such as the one which you have just testified—a stub of the same number, but a different payee and a different amount?

Mr. Veeder: I object to the question. What difference does it make? How can we be bound, unless you can show that we had some notice of the check book?

Mr. Hughes: That is not the purpose, your Honor. I conceive that there are two elements here; first, that these transactions as between the plaintiff and the agent were unauthorized and fraudulent; secondly, as be- 153
tween the plaintiff and the defendant, that the defendant had notice of the fraud.

The Court: Yes.

Mr. Hughes: Now, this evidence has no relation to the second thing.

The Court: It would not be binding upon this defendant at all—the stubs. I mean, even assuming that these stubs, as the testimony of the witness would indicate, show a

diversion of funds, that, of course, would not bring home to the defendant, in and of itself, knowledge of the fraudulent nature of the transactions.

Mr. Hughes: No, and it is not offered for that purpose. Of course, if Judge Veeder were prepared to stipulate that these checks, as between the agent and the plaintiff, were fraudulent checks——

Mr. Veeder (interposing): How can I? I do not know. I am waiting to see whether the witness knows.

155 The Court: I think you will have to take up your checks—each one of them—unless there is some kind of stipulation which you can enter into, which would shorten the proof. In other words, put your check stubs in evidence, stating that those are the only check stubs, and then the checks, and show that the face of the checks does not correspond with the stubs.

Mr. Veeder: The defendant is without any knowledge about the facts with respect to that.

The Court: Possibly you could put in a written resumé of the check stubs of these particular checks, and opposite each have a
156 notation with the actual number of the check bearing the corresponding number. If you can do that, I think it would shorten it very much.

Mr. Hughes: All right.

The Court: The real question is a question of law.

Mr. Hughes: Oh, yes; the real question is whether the defendant had notice, but as a preliminary measure I simply wanted to

make sure that there was no doubt about our establishing—that is, as between the agent and the principal—these things were fraudulent transactions.

Mr. Veeder: Of course, we do not want to throw away any available defenses, and unless you can prove that this money was misappropriated as alleged, your case falls on that ground.

Mr. Hughes: I conceive that I have already proved that through the testimony of the principal that he did not know of the drawing of these checks.

The Witness: I can give you the history of each of these checks. 158

By Mr. Hughes.

Q. Check No. 371, July 12, 1916, for $1,000, Plaintiff's Exhibit No. 5; what does the stub book show with respect to that?

The Court: The stub book can be identified. It may be that for some of those checks there are no stubs, and that for other checks there are stubs. Now, he can simply identify them, without its being binding on the defendant, and Judge Veeder can make a formal objection on the record, if he wishes, protecting any rights that might be transgressed or jeopardized. I think, in a trial under these circumstances, not before a jury of twelve, a good deal can be done that might not be appropriate before a jury of twelve. 159

Mr. Veeder: Oh, yes, of course. I do not know what the question is.

Mr. Hughes: I sought to clear it up by a general question, but there was objection to

that. Will the stenographer read the question?

(Question read.)

Mr. Vessler: I object to that question on the ground it is incompetent, irrelevant, immaterial and not binding on the defendant.

The Court: I do not know that that is binding on the defendant, and I would not receive it if it were intended, at this juncture, to be binding on the defendant. I think the objection would have to be sustained, if that were the purpose of the offer; but I take it that you are now identifying
161 these checks which were found by the witness, which he says he has theretofore had no knowledge of?

Mr. Hughes: Yes, your Honor.

The Court: With certain stubs purporting to be numbered with numbers corresponding to the numbers on these checks?

Mr. Hughes: Some of them, yes.

The Court: Or that he has examined all the check stubs that he has been able to obtain, and found no stub which contains a notation with respect to these checks. Now, I do not know that that proves anything at all.

162 Mr. Hughes: I state in offering this proof that I disclaim any contention that the defendant had any notice of what took place in the plaintiff's stub book. This proof is not offered in support of our contention that the defendant had notice. It is offered for the purpose of being cumulative to the testimony which the plaintiff has just given, that as between the plaintiff and C. H. Cahan, Jr.,

these checks were fraudulent checks. One bit of evidence showing that is the evidence that he covered them up.

Mr. Veeder: He did not testify to that, Mr. Hughes. He was not permitted to testify that it was fraudulent. In so far as his lack of knowledge is concerned, I object to it on the ground that it is irrelevant and immaterial.

Mr. Hughes: That testimony is already in the record.

The Court: I am in doubt about these stubs and the propriety of the question. I think that if you will frame your question 164
along the line of ascertaining what knowledge, if any, he had of these checks, which is merely amplifying his statement that he had no knowledge prior to the discovery, I will admit that, subject, of course, to objection and exception, and subject to being stricken from the record at the conclusion of the trial, if the Court subsequently determines, on motion, that they are not competent.

Mr. Hughes: I would be very glad to have this testimony taken under such a ruling, the decision on the question of admissibility to be reserved; that it be taken subject to a motion to strike out, which may be decided at 165
the time the case is finally concluded.

Mr. Veeder: That might lead us pretty far afield.

The Court: Yes, I am afraid it might.

By Mr. Hughes.

Q. Then, I will ask you in regard to anyone of these twenty-one checks——

The Court (interposing): Do not take this, Mr. Stenographer.

(Informal discussion off the record.)

The Court: Just offer them in evidence, assuming that they are all the stubs discovered, and the only ones of which he had knowledge with reference to these particular checks. Then the rest is matter of argument, and they will be received subject to defendant's objection, and also subject to a motion to strike them from the record. I assume you are going to offer the check stubs only that have to do with these particular checks?

167 Mr. Hughes: Of course, your Honor, in the case of a good many of them there is not any check stub that has to do with the particular check; the fact is simply that there is not any stub.

The Court: Then offer the check stubs.

Mr. Vessler: I thought that was the case with all of them. Is there something else that you offer this for besides the absence of the stubs?

Mr. Hughes: In some cases there is a stub of the same number, but to a different payee and for a different amount—apparently another check entirely, in other words.

168 *By Mr. Hughes.*

Q. Mr. Cahan, I show you thirteen books of check stubs (handing to witness).

Mr. Hughes: I would suggest to his Honor that it would be the quicker way to do it to go right through with these and have him testify where there is no stub, but when there is a stub showing a different payee

and a different amount, then have that stub marked in evidence.

Mr. Veeder: It is entirely immaterial to me how you do it, as long as I have my objection to the whole line of testimony, and an exception. It does not make any difference to me how you do it.

Mr. Hughes: It does not make any particular difference to me, so long as we can identify them sufficiently for the Court.

The Court: Perhaps you had better proceed in the way you had planned before.

By Mr. Hughes. 170

Q. With respect to Plaintiff's Exhibit No. 5, is there any stub in your stub books in connection with your account with the agency of the Bank of Montreal for any check numbered 371? A. No.

Mr. Veeder: May I have my objection as incompetent, irrelevant and immaterial?

The Court: Yes.

Mr. Veeder: And may I have it noted to all succeeding questions on this line, without specifically making the objection each time?

The Court: Yes, and the objection will be overruled for the present, with an exception to the defendant.

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Mr. Veeder: Yes.

The Court: And the Court may, at a later moment, entertain a motion to strike it from the record.

Q. With regard to Plaintiff's Exhibit No. 5-A, is there any stub in the check book bearing such a number—bearing the number 387? A. There is a

corresponding stub in the check book for No. 387 of August 1, 1916. It shows——

The Court (interposing): Well, I suppose it speaks for itself.

The Witness: Yes, it speaks for itself. Why should I not tear that out?

Mr. Hughes: No, I would not tear it out.

The Court: No.

Mr. Hughes: I ask that that be marked.

The Court: Of course, all this is received for the present subject to the defendant's objection.

173 Mr. Veeder: Yes.

The Court: It really does not prove anything, as matter of fact, other than a stub with a number on it, and that that is the same number as appears on a check—one of these checks.

Q. This document that I hold in my hand, and which you have just produced, is a book of stubs of your checks on the agency of the Bank of Montreal, New York City, from June 19th, 1916, to August 6th, 1916, is it (handing papers to witness)? A. Yes.

Q. And that contains, does it, an entry of checks——

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The Court (interposing): It speaks for itself.

Mr. Hughes: I was just going to read the stub into the record.

The Court: Then just read it to the stenographer. It is received subject to objection.

Mr. Veeder: Why do you not put it in just as it stands?

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Mr. Hughes: All right. I will offer it as Exhibit No. 6.

(Paper marked Plaintiff's Exhibit No. 6.)

Q. I call your attention to the fact that that shows a check for $5,000 to the order of the Guaranty Trust Company. Are you able to testify as to whether there was any check for $5,000 to the order of the Guaranty Trust Company drawn on your account with the agency of the Bank of Montreal? A. Yes, but——

Q. (Interposing) I say, for $5,000? A. I think so, on that date. I think I saw on that date a check drawn on the Guaranty Trust Company— drawn on the agency of the Bank of Montreal for $5,000 in favor of the Guaranty Trust Company of New York. I think it was shown to me. I think probably I signed it, but no such check was deposited to my credit at the Guaranty Trust Company.

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Q. And did any such check come back with your canceled vouchers from the agency of the Bank of Montreal? A. No.

Q. And was any check on that date, or on or about that date, for $5,000 to the order of the Guaranty Trust Company debited to your account or debited against your account with the agency of the Bank of Montreal? A. No other check except this check No. 387, Exhibit 5-A.

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Q. And that is the check that has been introduced in evidence, Plaintiff's Exhibit No. 5-A, to the order of C. H. Cahan, Jr.? A. Yes. I think it is obvious what happened.

Mr. Hughes: He entered check No. 387 to the order of the Guaranty Trust Company, which was the other bank in which his father

had an account, and the actual check with which his account with the agency of the Bank of Montreal was debited, was a check to the order of C. H. Cahan, Jr.

The Witness: I think what was done is obvious.

Q. But you are able to testify positively, are you, that on or about that date no other check $5,000 was debited to your acount with the agency of the Bank of Montreal, except Plaintiff's Exhibit No. 5-A to the order of C. H. Cahan, Jr.?

179 Mr. Veeder: Let the account show.

Mr. Hughes: I assume he is competent to testify.

The Court: I am afraid not. I am afraid the account itself would be the best evidence. Is that your objection, Judge? Is it your objection that the account itself is the best evidence as to whether or not it was debited or credited, as the case may be?

Mr. Veeder: Yes, the records are the best proof of that.

Mr. Hughes: Do I understand that you insist that we prove it from the records of the agency of the Bank of Montreal?

180 Mr. Veeder: You may do as you like. If you want to prove the fact, that is the way to prove it. I must object to taking this man's recollection of what it may have been, when you have something positive to show it, if it is material.

Q. Now, Plaintiff's Exhibit No. 5-B——

The Court (interposing): Is your question withdrawn for the present?

Mr. Hughes: Yes, your Honor. I have spoken to a representative of the agency of the Bank of Montreal, and he has promised to get a transcript of the account.

The Witness: I have a copy of that account here.

Q. Of the agency of the Bank of Montreal? A. Yes.

Mr. Hughes: Possibly the defendant's attorney would not accept it.

The Court: I think we had better take that up during the recess.

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Mr. Veeder: Let me look at it. If it is prepared by any responsible person, I shall probably not object to it. I mean, we will take it up during the recess.

The Court: Yes. Then let us take a recess now until 2 o'clock.

RECESS.

AFTERNOON SESSION.

CHARLES HAZLITT CAHAN resumed the stand.

Direct examination (continued) by Mr. Hughes.

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Mr. Veeder: If your Honor please, the attorney of record calls my attention to the fact that I have been perhaps a little hasty here, and if Mr. Hughes has no objection, if your Honor will look at the first, separate defense—that is, the eleventh numbered paragraph, it sets up the certification or acceptance of these checks by the depository banks.

The Court: Yes.

Mr. Veeder: I apprehend it is not really necessary to set them up separately, because the checks show on their backs or their faces just what was done, but it is desired that I keep that first, separate defense, so that the motion to amend would begin with the twelfth instead of with the eleventh.

The Court: I see.

Mr. Veeder: And I will take occasion now, while I am at it, to strike out the last sentence of the first, separate defense, beginning at the end of folio 11, "That this defend-
185 ant has not been negligent, but that the loss of the plaintiff has arisen from the negligence of the said Guaranty Trust Company of New York and of the agents of the Bank of Montreal, and from the negligence of the plaintiff as hereinafter set forth." I will strike that out of the first defense, but otherwise I will keep the first defense in, and begin my striking out with the twelfth instead of with the eleventh numbered paragraph. I think that will make it clear.

The Court: Very well.

Mr. Hughes: As to that defense, the plaintiff simply wishes to call the Court's attention to the fact that the proof submitted has
186 shown that instead of there being only one check that was not certified, there were two that were not certified, and as to the last check, the one which we haven't got, it does not appear one way or the other, whether it was certified or not.

The Court: I suppose if it had been, the certification records of the bank would show that, would they not? I think they keep a record of certified checks.

Mr. Hughes: The bank on which it was drawn?

The Court: Yes.

Mr. Veeder: Yes, I suppose that would show.

By Mr. Hughes.

Q. Now, Mr. Cahan, before recess we were going over these stubs with respect separately to each of these checks, and I have forgotten exactly what point we had reached, but it may not be amiss to repeat somewhat. I understand that in regard to Plaintiff's Exhibit No. 5, check No. 371, on the 188
Bank of Montreal for $1,000 to the order of C. H. Cahan, Jr., no stub for check No. 371 appears in the stub book? A. There is no stub.

Q. And there is no stub either, as I understand it, of any check on or about that date in the amount of $1,000 to the order of C. H. Cahan, Jr.? A. No.

Q. Now, in regard to Plaintiff's Exhibit No. 5-A, check No. 387, on the agents of the Bank of Montreal to the order of C. H. Cahan, Jr., in the amount of $5,000, there has been introduced in evidence a stub of a check for $5,000 to the order of the Guaranty Trust Company of New York on that date—A. (Interposing) Of the same number.

Q. And bearing the same number, 387? A. Yes.

Q. Now, does your stub book for the period in 189
question show any stub on or about that date of a check to the order of C. H. Cahan, Jr.? A. No.

Q. In the amount of $5,000? A. No.

Q. Or any other stub for $5,000 except that one to the Guaranty Trust Company? A. No.

Q. Now, Plaintiff's Exhibit No. 5-B, check No. 415, on the agents of the Bank of Montreal, to the order of C. H. Cahan, Jr., for $2,000, what is the fact with respect to that check?

Mr. Veeder: Are you now examining him about the situation or are you introducing—

Mr. Hughes (interposing): I am asking him whether there is any stub.

Mr. Veeder: Are you going to introduce these?

Mr. Hughes: The only one so far that there has been any stub bearing the same number, has been introduced in evidence as Plaintiff's Exhibit No. 6.

Mr. Veeder: Even so, where you rely on the absence of any stub, that section of the book ought to go in, ought it not?

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Mr. Hughes: The whole section?

Mr. Veeder: That little piece of it—whatever you call it.

Mr. Hughes: It seems to me that when the witness gives a categorical answer that there is no stub, that if you want to cross-examine him or to look at the stub book——

Mr. Veeder (interposing): All right.

The Witness: The only stub, No. 415, September 1, 1916, shows "N. Y. Telephone Company, $9.27."

Mr. Hughes: I ask that that be marked in evidence as Plaintiff's Exhibit No. 6-A—that stub.

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(Paper marked Plaintiff's Exhibit No. 6-A.)

The Witness: May I add a comment, and it may be stricken out if it is desired. I looked into that, and I found that that check for $9.27 had actually been paid by another check which I have.

Q. Then this is the only check, is it—the only stub in this stub book bearing the number 415? A. Yes.

Q. And is there any stub in the stub book indicating any check on or about September 1, 1916, in the amount of $2,000 payable to the order of C. H. Cahan, Jr.? A. No, there is not.

Q. The next is Plaintiff's Exhibit No. 5-C, check No. 435, on the agents of the Bank of Montreal, to the order of the Empire Trust Company in the amount of $3500. Is there any check for $3500 in your stub book? A. No, there is no check for $3500 in the stub book.

Q. And is there any stub in the stub book bearing any notation of a check bearing any number, drawn on or about September 20, 1916, in the sum of $3500 to the order of the Empire Trust Company? A. No. 194

Q. Plaintiff's Exhibit No. 5-D, check No. 449, on the agents of the Bank of Montreal, payable to the order of the Empire Trust Company in the amount of $1,000—is there any stub in the stub book bearing the number 449 of date September 1, 1916? A. September 20th?

Q. Yes, September 20. Did I say "September 1st"? A. Yes. September 30th, it should be.

Q. Yes, September 30 is right, No. 449. A. No. Stub No. 449, October 2, 1916, contains the note, "Guaranty Trust Company of New York, $1,000." 195

Mr. Hughes: I ask that that stub be marked in evidence as Plaintiff's Exhibit No. 6-B.

(Paper marked Plaintiff's Exhibit No. 6-B.)

Q. That is the only stub numbered 449 in the book? A. Yes.

Q. And is there any stub in the book with reference to any check or dated approximately or proximately to September 30, 1916, in the amount of $1,000 to the order of the Empire Trust Company? A. Oh, no; I never had any transaction personally with the Empire Trust Company in my life.

Mr. Hughes: I ask that that be stricken out.

Q. Is there any stub in that book on or at any date about September 30, 1916, containing any notation of a check in the amount of $1,000 to the
197 Empire Trust Company? A. No. I may as well say—I can say absolutely that there is no stub of any kind in any check book of mine purporting to be a check paid to the Empire Trust Company in my life.

Q. Plaintiff's Exhibit No. 5-E, check No. 456, on the agents of the Bank of Montreal, to the order of C. H. Cahan, Jr., in the amount of $670, is there any stub in the stub book for any check No. 456 on the agents of the Bank of Montreal? A. Yes, a check numbered 456, October 13, 1916, is entered in the stub as "Cash for telegram, $6.70."

Q. $6.70? A. Yes.

Q. And the amount of this check was $670? A. Yes.

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Mr. Hughes: Now, I ask that that stub be marked in evidence.

(Paper marked Plaintiff's Exhibit No. 6-C.)

Q. And is there any stub in your stub book of your account with the agents of the Bank of Montreal containing an entry of any check on or about

October 13, 1916, to the order of C. H. Cahan, Jr., in the sum of $670? A. No, no such amount was ever paid or entered.

Q. That is, when you say it was never paid, you mean never entered in the stub book? A. Yes.

Q. Plaintiff's Exhibit No. 5-F, check No. 473, on the agents of the Bank of Montreal, to the order of C. H. Cahan, Jr., in the amount of $1,000, is there any check numbered 473 in your stub book of your account with the agents of the Bank of Montreal? A. No. 473?

Q. Yes. A. 473 in the stub book, November 1, 1916, is entered, "Cash, box of cigars, $5.25."

200

Q. That is the only stub bearing the number 473, is it? A. Yes.

Q. And is there any stub showing any check on or about November 1, 1916, on the agents of the Bank of Montreal in the sum of $1,000 to C. H. Cahan, Jr.? A. No, none at all.

Q. Plaintiff's Exhibit No. 5-G, check No. 495, on the agents of the Bank of Montreal, to the order of C. H. Cahan, Jr., in the sum of $1,000, is there any check numbered 495 in the stub book of the agents of the Bank of Montreal? A. Yes, sir.

Mr. Veeder: You did not offer that last one.

Mr. Hughes: I beg your pardon. Thank you. I offer that stub, No. 473.

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(Paper marked Plaintiff's Exhibit No. 6-D.)

Q. Now, to return to my last question, is there any stub bearing the number 495 in your stub book with the agents of the Bank of Montreal? A. Yes, stub No. 495 is dated November 16, "Paid for notarial certificate, County Court, clerk's fees, $1.95."

Mr. Hughes: I ask that this be marked in evidence.

The Court: Was that November 16th?

The Witness: Yes.

(Paper marked Plaintiff's Exhibit No. 6-E.)

Q. Is there any other stub in that book bearing the number 495? A. None.

Q. Is there any stub bearing any notation of a check on or about November 17, 1916, in the amount of $1,000 to the order of C. H. Cahan, Jr.? A. No,
203 nothing, sir.

Q. Plaintiff's Exhibit No. 5-H, check No. 514, on the agents of the Bank of Montreal, to the order of C. H. Cahan, Jr., in the amount of $1,000, is there any stub in your stub book of the agents of the Bank of Montreal bearing the number 514? A. Yes.

Q. What does that show? A. Cash, $7.50. That is for petty cash. Stub No. 514, December 1, 1916. That is a petty cash item of $7.50.

Q. Is there any other stub numbered 514 in the stub book? A. None.

Q. Is there any stub in the stub book indicating any check on or about November 29, 1916, in the amount of $1,000 to the order of C. H. Cahan, Jr.?
204 A. No, there is no such transaction shown here.

Mr. Hughes: I ask that this stub, No. 514, be marked in evidence.

(Paper marked Plaintiff's Exhibit No. 6-F.)

Q. Now, Plaintiff's Exhibit No. 5-I, check No. 569, on the agents of the Bank of Montreal, dated January 2, 1917, to the order of C. H. Cahan, Jr.,

in the amount of $1,000, is there any stub bearing the number 569? A. Yes, a stub numbered 569, January 2, 1917, to petty cash, an item of $5.

Mr. Hughes: I ask that that be marked in evidence.

(Paper marked Plaintiff's Exhibit No. 6-G.)

Q. Is there any other stub numbered 569 in the stub book? A. No.

Q. Is there any stub in the stub book indicating a check on or about January 2, 1917, in the amount of $1,000 to the order of C. H. Cahan, Jr.? A. No, 206
there is no such stub.

Q. Plaintiff's Exhibit 5-J, a check without number, dated January 3, 1917, on the Guaranty Trust Company to the order of the Empire Trust Company in the amount of $3,000. Is this your check book on the Guaranty Trust Company containing the stubs of the checks drawn on that account (handing book to witness)? A. It is.

Q. Is there any stub— A. (Interposing) What date is this?

Q. January 3, 1917? A. No, there is no stub of that date at all.

Q. No stub of January 3 at all? A. No.

Q. And no stub dated on or about that date for 207
the amount of $3,000 to the order of C. H. Cahan, Jr.? A. No, no transaction of that kind at all.

Q. Plaintiff's Exhibit No. 5-K, check without number, dated January 13, 1917, on the Guaranty Trust Company to the order of C. H. Cahan, Jr., in the amount of $4,000, is there any check in the Guaranty Trust Company stub book corresponding with that check? A. No, there is no stub at all.

Q. Is there any stub dated January 13, 1917? A. No.

Q. Is there any stub on or about that date, in the amount of $4,000, payable to the order of C. H. Cahan, Jr.? A. No, there is no transaction of that kind indicated or stub entered.

Q. Plaintiff's Exhibit No. 5-L, check No. 34, on the Guaranty Trust Company, dated March 22, 1917, to the order of C. H. Cahan, Jr., in the amount of $5,000, is there any stub numbered 34?

The Court: $500?

Mr. Hughes: Yes, $500, I should have said.

The Witness: There is a stub numbered 34. It is dated May 12, 1917, payable to J.
209 L. Hetherington, to pay fully on account retaining wall, $1,000, and I have that check. That was in connection with building a new retaining wall against the sea at my summer residence at Halifax, and I have that check. That is May 12th, numbered 34.

Q. There is no other No. 34? A. There is no other No. 34 entered, and no transaction of the kind of $500 of March 22, 1917.

Q. To the order of C. H. Cahan, Jr.? A. No. The only other item in March at all is an item of $350 on March 22, where I paid a draft drawn on me to the agents of the Bank of Montreal, $350.

210 The Court: That is your own draft you mean?

The Witness: No, it is a draft drawn on me by Mr. Saunders, who was doing some business for me.

Q. There is no stub showing any check drawn to the order of C. H. Cahan, Jr., on or anywhere near March 22, 1917? A. No.

Q. In the amount of $500? A. No, no such transaction.

Mr. Hughes: I ask that this stub, No. 34, be marked in evidence.

(Paper marked Plaintiff's Exhibit No. 6-H.)

Q. Plaintiff's Exhibit No. 5-M, check without number, dated April 12, 1917, to the order of C. H. Cahan, Jr., in the amount of $500, is there any stub corresponding with that check in the Guaranty Trust Company stub book? A. The check has no number, and there is no corresponding stub entry at all for that sum.

Q. Is there any stub on or anywhere near April 212
12, 1917, in the sum of $500? A. No.

Q. To the order of C. H. Cahan, Jr.? A. No, there are no entries in the stubs for the month of April at all.

Q. And none anywhere near then to the order of C. H. Cahan, Jr.? A. No, there is none in the entire book to the order of C. H. Cahan, Jr.—nothing.

Q. Plaintiff's Exhibit No. 5-N, check without number, dated May 26, 1917, on the Guaranty Trust Company to the order of C. H. Cahan, Jr., in the amount of $750. Is there any corresponding stub in the Guaranty Trust Company's stub book? A. No, there is no corresponding entry in the stub book at all. There is no item of $750, and no entry 213
at all on May 26.

Q. And you have already testified, as I understand it, that there are no stubs indicating any check to the order of C. H. Cahan, Jr., in the whole Guaranty Trust Company stub book? A. No.

Q. So that will obviate further questions of that sort. Plaintiff's Exhibit No. 5-O, check without a number, dated May 29, 1917, on the Guaranty Trust

214 *Charles Hazlitt Cahan—Plaintiff—Direct.*

Company to the order of C. H. Cahan, Jr., in the amount of $500. Is there any— A. (Interposing) No corersponding stub entry for a check of that kind or at that date.

Q. Plaintiff's Exhibit No. 5-P, check without number, dated July 27, 1917, on the Guaranty Trust Company to the order of C. H. Cahan, Jr., in the amount of $500, is there any stub bearing any relation to such a check? A. No, there is no stub. The checks entered in July are two checks numbered 40 and 41. One is to pay interest on a mortgage, No. 40, which is a valid check, and the other one
215 was to pay the Collector of Internal Revenue of the United States my income tax. I was charged an income tax while I was here. No other entries of any kind relating to this item of July 27, 1917, in the stub book.

Q. Plaintiff's Exhibit No. 5-Q, check No. 39, on the Guaranty Trust Company, August 20, 1917, to the order of C. H. Cahan, Jr., in the amount of $1,000, is there any stub numbered 39 in the book? A. There is no stub. There is a blank where 39 might have been, with a date marked out—a date in August, 1919, but there is no corresponding entry for any item at all.

Mr. Hughes: I ask that that page be
216 marked in evidence.

(Papers marked respectively Plaintiff's Exhibits 6-I and 6-J.)

The Court: Of course, that is no evidence. It might have been anything.

Mr. Hughes: Yes, absolutely. The only point is that the checks run numbered 37, 38, 40, and 41, and 39 is left out.

The Court: You mean there is an intervening number that is left out?

Mr. Hughes: Yes.

Q. Plaintiff's Exhibit 5-R, check numbered 123, dated August 31, 1917, on the agents of the Bank of Montreal, to the order of C. H. Cahan, Jr., in the amount of $500. Is there any stub in the stub book of the account with the agents of the Bank of Montreal bearing the number 123? A. August 31, 1917?

Q. Yes. A. There must be another entry——

Q. (Interposing) That is August, 1917. I can not find that stub book. A. It has been mislaid, 218
apparently.

Q. Can you testify as to whether there was any stub? A. Yes, there was a stub of check No. 123, reading "Dr. Gibbs, $24," and I found another check which I gave you, bearing no number, by which Dr. Gibbs was paid his account of $24.

Q. Is this the check (handing paper to witness)? A. Yes, this is the check without number, and the lead pencil mark "123" was marked when I was sending it to you. That is my own mark to identify it. Dr. Gibbs was paid by this check. The entry in the stub book is as I have stated. I think you will find that somewhere amongst the papers.

Mr. Hughes: I ask that that be marked for 219
identification.

(Paper marked Plaintiff's Exhibit No. 6-K for Identification.)

Q. Plaintiff's Exhibit No. 5-S, check No. 121, dated September 1, 1917, on the agents of the Bank of Montreal, to the order of C. H. Cahan, Jr., in the amount of $350, is there any stub in the stub

book bearing the number 121? A. Yes, there was, and it was in favor of some—suppose I go through this again. It was in favor of some legitimate item, I remember, and what it turned out to be, there were two checks numbered 121—this one for $350, which is in evidence, and another valid check for some personal account of mine numbered 121, which was entered in the stub book.

Q. But this check, numbered 121, to the order of C. H. Cahan, Jr., in the amount of $350, was there any entry in the stub book of that sort? A. No, no entry at all.

221 Q. And in regard to Plaintiff's Exhibit No. 5-R, was there in the stub book any entry of any checks on or about August 31, 1917, showing a check to the order of C. H. Cahan, Jr., for $500? A. What was that check?

Q. That was the last one. I simply omitted to ask you that question. Is there any stub in the stub book for that? A. No. In the stub book for check 123 it was marked "Dr. Gibbs, $24," which was paid by a check which I produced, which has no number.

Q. And there was no stub in the stub book indicating a check on or about August 31, 1917, to the order of C. H. Cahan, Jr., in the amount of $500? A. Oh, no.

222 Q. Now, the last one is this check which we have not got, and which is not in evidence, in the amount of $2,400, dated October 15, 1918, for the sum of $2,400 on the Guaranty Trust Company, payable to the order of C. H. Cahan, Jr., or the defendant, Empire Trust Company. Is there in the Guaranty Trust Company stub book any stub corresponding to such a check, October 15, 1918? A. No, nothing at all.

Q. You have already testified that there is no stub in the Guaranty Trust Company stub book indicating any check to the order of C. H. Cahan, Jr. Is there any stub, I ask you now, in the Guaranty Trust Company stub book indicating any check to the order of the Empire Trust Company? A. No. I have not found that check, and I traced them partly through the kindness of the Guaranty Trust and partly that of the Empire Trust. I must say that the Empire Trust gave me every assistance in getting into these matters.

Q. Mr. Cahan, these fourteen books of stubs, are those all books of stubs in relation to your account with the agents of the Bank of Montreal, New York City? A. You have all the stub books for that period, except this one to which we have just referred, which is missing, and which I think must either be in your office or in one of my bags, because I had it in making these notes. 224

Q. And except for that one, these are all the stub books on the agents of the Bank of Montreal that are now in your possession? A. I gave you everything, yes.

Q. Well, anyway, all of these are stub books of your checks on the agents of the Bank of Montreal? A. Yes, quite so.

Mr. Hughes: I ask that these be marked for identification. You had better give them another number and mark them A, B, C, etc. 225

Q. And is this book your only book of stubs of checks on your account with the Guaranty Trust Company (handing book to witness)? A. I believe so.

Mr. Hughes: I ask that this be marked for identification.

226 *Charles Hazlitt Cahan—Plaintiff—Direct.*

Q. Mr. Cahan, did you at any time have any account of your own with the Empire Trust Company? A. Never.

Q. Did you ever have any transactions of any kind with the Empire Trust Company? A. No personal transactions with the Empire Trust Company in my life. I signed checks paying out, sir, sixty or seventy millions of dollars in New York, in a representative capacity, and they went everywhere, but I have never had any personal transaction with the Empire Trust Company.

Q. Was there any transaction of yours by reason of which moneys of yours would properly be payable to the Empire Trust Company? A. No, I never owed them a cent, and never had a transaction with them in a personal capacity for a cent in my life. I remember treating with them once with regard to a trust deed in connection with a trust we thought of establishing in connection with the——

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Q. (Interposing) Was that purely a legal matter? A. It was purely a legal and financial matter, in which we did not need their assistance in fact. Then I signed checks in a representative capacity, as I said—and I might have said nearer seventy millions of dollars, and I cannot remember where they went. They went to all sorts of banks in this city.

228 Q. They were not signed by you personally? A. No.

Q. Or on your personal account—any personal account of yours? A. No, they had nothing to do with any personal account of mine.

Q. Coming specifically to the three checks which have been marked in evidence, payable to the order of the Empire Trust Company, or four checks, if it should turn out that the check of October 15, 1918, was to the order of the Empire Trust Company,

was there any transaction of yours— A. (Interposing) They did not represent any transaction of mine.

Q. Now, I believe that you have already testified that you had no knowledge that C. H. Cahan, Jr., had ever opened any account with the Empire Trust Company? A. No.

Q. You never authorized or instructed him to open any such account? A. No, I never knew that he had a personal account with them, and I did not know that he had a personal account in the city, in fact. I did not think there was any transaction in which he would necessarily need a personal account. 230

Q. Now, with regard to these other checks, or with regard to all these checks, these twenty-one checks that have been introduced in evidence, or the twenty-first that has not been introduced in evidence, was there any transaction between you and C. H. Cahan, Jr., by virtue of which the moneys shown on any of these checks were properly payable from you to C. H. Cahan, Jr.? A. No.

Q. Were any of these checks drawn for any purpose of your own? A. They were not drawn for any purpose of my own.

Q. When you learned of these checks that had gone into the Empire Trust Company, did you, as soon as you had collected the facts and knew the 231
facts, write to the defendant, Empire Trust Company, with respect to it? A. Yes.

Q. Is this your letter advising them of the facts (handing paper to witness)? A. Yes.

Q. Is that your first letter to them? A. Yes, that is my first and original letter to them.

Mr. Hughes: I offer that letter in evidence.

Mr. Hughes: The agents of the Bank of Montreal I understand are preparing a similar transcript from June 1, 1916, through the year 1917, which is the period covered by these transactions, and that I desire to offer at a later time.

The Witness: I can give you a typewritten copy of what they furnished for the other suit, and which was put in evidence there.

Mr. Hughes: Then may we offer that, subject to correction, or had you rather wait until this one arrives?

239 Mr. Veeder: It makes no difference to me, Mr. Hughes.

Mr. Hughes: Then let us wait until that one arrives. As the next item of documentary proof, your Honor, without conceding the correctness of the same, but as an admission by the defendant of the state of the account of C. H. Cahan, Jr., with the defendant from the opening until the close of the same, I offer the pages from the book of account of the Empire Trust Company containing entries with respect to that account, and physically offer what has been handed to us by the Empire Trust Company as a photostatic copy thereof.

240 Mr. Veeder: Why all this caution? You looked at the books, did you not?

Mr. Hughes: Well, we did not compare it. We might not concede that it was correct.

(Papers marked Plaintiff's Exhibit No. 11.)

Mr. Hughes: We have not gone over this in detail. We want to call attention to one feature in order that the defendant

may not be surprised, and may meet it in any way that they see fit on their case. Of date on this account, July 29, 1916, there appears a credit item of $5,000, and immediately under that also apparently of date July 29th a debit item of $2,500. I may say that that credit of $5,000 is the only $5,000 credit on this account anywhere near that date. From Plaintiff's Exhibit No. 5-A in evidence, check No. 387 on the Bank of Montreal to the order of C. H. Cahan, Jr., in the amount of $5,000, it appears that that check was dated August 1st, accepted by the agents of the Bank of Montreal on August 1st, and 242
paid through the Clearing House on August 2nd. Therefore, this account is apparently in error with respect to the date on which that check was paid into the account. That is, instead of going in on July 29, 1916, it went in either on August 1st or August 2nd, 1916. The materiality of that is that unless this debit item of $2,500, which, on the face of the account, also appears as July 29, 1916 —unless that is also an error, the account was overdrawn from July 29th to August 1st or 2nd, 1916. I simply wish to point that out so that the defendant can meet it in any way it can. 243

By Mr. Hughes.

Q. Mr. Cahan, I show you a letter or what purports to be a letter signed by C. H. Cahan, Jr., to the Empire Trust Company, dated June 16, 1916, which letter has been produced in response to a subpoena which we served on the Empire Trust Company, and I ask you if that is C. H. Cahan,

Jr.'s signature (handing paper to witness)? A. Yes.

Mr. Hughes: I ask that that be marked for identification.

(Paper marked Plaintiff's Exhibit No. 12 for Identification.)

Q. There is mentioned in that letter a note of Edward L. Doucette, Hamilton Apartment, for $1,092.50. Did that note represent any transaction of yours? A. No.

245 Q. Did you have any knowledge of it? A. I never knew a man by the name of Edward L. Doucette, and had no transactions with any such man.

Mr. Hughes: I ask that there be marked for identification—a letter signed blank assistant secretary. I take it that is a letter from the Empire Trust Company to C. H. Cahan, Jr., of date August 3, 1916—rather, that it is a carbon copy of a letter (handing paper to Mr. Veeder).

(Paper marked Plaintiff's Exhibit No. 13 for Identification.)

By Mr. Hughes.

246 Q. I show you another letter, dated August 21, 1916, purporting to be signed by C. H. Cahan, Jr., to the Empire Trust Company, and ask you if that is C. H. Cahan, Jr.'s signature (handing paper to witness)? A. Yes.

Mr. Hughes: I ask that that be marked for identification.

(Paper marked Plaintiff's Exhibit No. 14 for Identification.)

Q. That also mentions this Mr. Doucette. You had no knowledge of the transaction mentioned in that letter (handing paper to witness)? A. No, I never knew of any Edward L. Doucette. It represents no transaction of which I was cognizant, nor did I ever know any John B. Newman, or have any knowledge of him.

Q. I show you letter, dated August 21, 1917, to the Empire Trust Company, purporting to be signed by C. H. Cahan, Jr., and ask you if that is C. H. Cahan, Jr.'s signature (handing paper to witness)? A. Yes.

Mr. Hughes: I ask that that be marked 248
for identification, together with the carbon copy of what purports to be the reply of the Empire Trust Company to C. H. Cahan, Jr., dated August 22, 1917.

(Papers marked Plaintiff's Exhibit No. 15 for Identification.)

Q. I show you a letter, dated August 31, 1917, to the Empire Trust Company, purporting to be signed by C. H. Cahan, Jr., requesting the credit of a check for $500 to the credit of his account, and I ask you if that is his signature (handing paper to witness)? A. Yes.

Mr. Hughes: The letter, dated August 31, 249
1917, is offered in evidence.

(Paper marked Plaintiff's Exhibit No. 16.)

Q. I show you another letter, dated September 1, 1917, to the Empire Trust Company, purporting to be signed by C. H. Cahan, Jr., and requesting the deposit of a check to the credit of his account, and I ask you if that is C. H. Cahan, Jr.'s signature (handing paper to witness)? A. Yes.

250 *Charles Hazlitt Cahan—Plaintiff—Direct—Cross.*

Mr. Hughes: I ask that that be marked in evidence.

(Paper marked Plaintiff's Exhibit No. 17.)

Q. I show you a letter, dated September 5, 1917, to the Empire Trust Company from C. H. Cahan, Jr., and ask you if that is C. H. Cahan, Jr.'s signature (handing paper to witness)? A. Yes.

Mr. Hughes: I ask that that and what seems to be a carbon copy of the reply of the Empire Trust Company to C. H. Cahan, Jr.,
251 dated September 6, 1917, be marked for identification.

(Papers marked Plaintiff's Exhibit No. 18 for Identification.)

Mr. Hughes: You may cross-examine.

Cross-examination by Mr. Veeder.

Q. Mr. Cahan, your son came to New York to live in May, 1915? A. Yes, about that time he came here.

Q. How old was he at that time? A. He was born on October 20, 1861—I think it was October
252 20th. Certainly, it was October, 1861.

Q. He was a barrister? A. Yes.

Mr. Hughes: 1861?

The Witness: No, I am speaking of my own birth. My son was born in October——

Q. (Interposing) Well, at the time of these transactions he was about thirty years old, was he? A. Yes, about that. Will you pardon me just one moment? He was born in 1887, in October.

Q. Well, it is unimportant, the exact date. He was a barrister? A. Yes.

Q. Did he ever practice in Montreal—was he with you? A. He was practicing—in Halifax he took his degrees first in an office with which I was connected, with the present Chief Justice of Nova Scotia, and then he went to Vancouver, where he practiced himself and was admitted to that bar, and then he came back, I should think, about 1913, is my memory, to Montreal to my office.

Q. In Montreal? A. Yes.

Q. Did you bring him down here to New York? A. He came——

Q. (Interposing) Or was it at your instigation 254
that he came to New York? A. Yes, he came at my request.

Q. And for what purpose? A. He came to assist me in connection with the legal matters which I was then attending to, which were very voluminous and very important.

Q. He had no business here of his own, on his own account? A. No, he came solely at my request; that is, so far as I know he had no private business here.

Q. Did he have any personal means, or what were his means of livelihood? A. He came here with his wife at my request, on the understanding that I was to pay the expenses of, you know, the family 255
expenses, which I did. They were living with me, and I paid him $225 a month. I told him that at the end of the year, when all things had turned out all right, I would give him a bonus, and I think his bonus at the end of the year, which I paid, was five or six thousand dollars.

Q. And did he draw any of this compensation, as we will call it, out of your accounts in the Guaranty Trust Company and the Bank of Montreal? A.

He drew nothing, so far as—I am dealing now from memory—so far as I know on the Guaranty Trust Company at all, but he did draw checks on the agents of the Bank of Montreal and cashed them, out of which he took his $225 a month. I may say, in addition to that, that I paid any traveling expenses that he had.

Q. Did he pay those accounts out of the deposits in the Bank of Montreal and the Guaranty Trust Company? A. No.

Q. Where did he get the money to pay them? A. I arranged at the office of the agency of the
257 Canadian Car & Foundry Company with the treasurer that when he was sent away traveling that they would make an advance and take a receipt and adjust it later. That was a matter from week to week or month to month.

Q. He was an officer of that company? A. He was nominally secretary of it.

Q. What do you mean by "nominally"—was he or was he not an officer of that company? A. He was appointed secretary of it, yes.

Q. Now, when he came down here he and his wife lived with you for a time at the Manhattan Hotel, did they not? A. Yes.

Q. Then you took an apartment? A. Yes, in October, if I remember, 1915, I took an apartment,
258 which I kept until August, 1917.

Q. How was that apartment paid for, the rent? A. The rent was paid for by the agency of the Canadian Car—they paid the rent.

Q. Do you know that? A. I know that as a fact, yes, absolutely, and besides that I brought with me an old household housekeeper, who kept the apartment, and I also brought with me then my old butler, who had been with me and who had enlisted, and got into bad health in the early part

of the campaign and came back, and he came with me here, and so I had those two who were conducting the apartment—old servants of mine.

Q. You have not made entirely plain to me on your direct examination what your purpose was in giving these powers of attorney to your son. A. I beg your pardon?

Q. You have not made it entirely clear to me, at all events, on your direct examination, what your purpose was in giving these powers of attorney to your son. A. My purpose in giving these powers of attorney to my son was to be able from time to time, through him during my absence or engagements elsewhere, to pay my personal living and 260
other expenses in the City of New York.

Q. And you expected him to do that as your attorney-in-fact? A. Beg pardon?

Q. And you expected him to pay those accounts as your attorney-in-fact? A. If during my absence, I expected him to pay them as they came in. When I was present I signed the checks when they came to me, and all the accounts were submitted to me, but I did not sign the checks to all of them at other times, when I was in New York. I was engaged then, well, many hours in the day, and sometimes the bills would come in——

Q. (Interposing) Well, he was supposed to take up the slack, anyway, as we say? I do not know 261
whether you understand that slang in Canada or not. A. Yes, he was there helping me.

Q. Now, having regard for the terms of your power of attorney to the Guaranty Trust Company, authorizing him to sign, endorse, deposit, draw and deliver all such checks and other orders for the payment of money as he may deem proper in connection with any— A. (Interposing) Will you read that a little louder, please?

Q. I am reading a passage from power of attorney you gave to the Guaranty Trust Company, authorizing your son to sign, endorse, deposit, draw and deliver all such checks and other orders for the payment of money as he may deem proper in connection with any kind of funds on deposit which I may now or hereafter have with the Guaranty Trust Company of New York—how do you undertake to say, as you have on your direct examination, that no one of the twenty-one checks in issue was drawn for any purpose of your own? A. Because that is——

263 Mr. Hughes (Interposing): I object to that.

Mr. Veeder: It is cross-examination.

The Court: Yes.

A. (Continuing) Because that is an absolute fact.

Q. Is that the only answer you have to make? A. None of those—I have audited myself the accounts, and I am accustomed to accounts, and I have had assistance in examining those accounts, and I can say that there was not a dollar of that money which was paid out which was for any purpose or business of mine.

264 Q. Mr. Cahan, have you, in fact, any knowledge at all as to what he did with the proceeds of those twenty-one checks? A. I have hearsay knowledge, yes.

Q. Well, what? A. I understand that he had——

Q. (Interposing) No, not what you understood. A. I told you I had hearsay knowledge. I found out and know that he had at least four or five stock accounts in Montreal, and I have discovered that he was engaged in stock gambling in New York.

Q. Well, suppose he was? I am talking about the proceeds of these twenty-one checks, and unless you can trace the proceeds of those twenty-one checks you do not know what he used them for. A. Do I know what he used the proceeds of the twenty-one checks for?

Q. Yes. A. They were deposited to his credit with the Empire Trust Company.

Mr. Hughes: I object to the form of the question. The proceeds of the check went into his personal account in the Empire Trust Company.

Mr. Veeder: I asked what he did with the 266
proceeds of the checks. We paid out the checks.

Q. Now, I am talking about the proceeds of the checks, of these twenty-one checks. Do you know anything at all about what he did with the proceeds of those?

Mr. Hughes: I object to that, if your Honor please, as incompetent, irrelevant and immaterial.

The Court: No, I think it is perfectly proper cross-examination.

Mr. Hughes: It is immaterial what he did with the funds that he had on deposit 267
with the Empire Trust Company.

Mr. Veeder: It is charged that he misappropriated them.

The Court: Yes.

Mr. Hughes: And he did misappropriate them the moment they went into his account in the Empire Trust Company. It is immaterial what happened to them after that.

The Court: No.

Mr. Hughes: I take an exception.

Mr. Veeder: You do not base your claim only on the ground that he deposited them in his account, but also on the ground that we paid his checks.

The Court: Objection overruled.

Mr. Hughes: Exception.

Mr. Veeder: Repeat the question, please.

(Question read.)

A. I think we misunderstand each other. We are talking two different languages probably. I understand that the proceeds of each one of those
269 checks——

Q. (Interposing) Never mind what you understand. A. (Continuing) —were received by the Empire Trust Company.

Q. Were what? A. Received by the Empire Trust Company.

Q. Were received by the Empire Trust Company? A. Yes, they received the checks, and the Empire Trust Company collected those checks as holder for value of the checks. Then the next transaction, that would be, accordingly, as I understand it, a loan from him to the Empire Trust Company, which stood to his credit.

Mr. Veeder: May I move that that be
270 stricken out? There is no proof of any loan at all. I move to strike out the answer as not responsive.

The Court: Yes, strike it out.

Q. Now, will you answer my question? I do not want to argue the legal proposition with you. I am asking you for the fact? Will you answer my question?

Mr. Veeder: Repeat the question, please. (Question read.)

A. Well, if you mean the credits which he had with the Empire Trust Company by reason of the transaction of cashing those checks—if that is what you mean——

Q. (Interposing) It was part of the credit, undoubtedly. A. If that is what you mean——

Q. Yes, that is what I mean. A. I do not know what he did with it. I have no definite knowledge. Would you allow me to add by way of explanation——

Q. (Interposing) If it is material. A. (Continuing) —that I do know that no personal or business accounts of mine were paid—— 272

Mr. Veeder (interposing): No. I move that that be stricken out.

The Witness: Well, I am absolutely sure of it.

Mr. Hughes: I submit that that is perfectly proper.

The Court: I will let that part of the answer stand. He has already testified to that, anyhow.

Mr. Veeder: I probably interrupted him before he got through. What did he say? 273

The Court: He said he did know that no part of any of those checks went for any personal or business matters of his.

Q. Well, how do you know that?

The Court: The stenographer had better give us his answer, and not rely upon the recollection of the Court.

(Answer read.)

Q. Well, how do you know that if you do not know what he did with it? A. Well, I know what he——

Q. (Interposing) Did with it? A. I know what my personal accounts were. I know absolutely what I incurred in the way of personal accounts. I know that absolutely—what my own expenditures were—that is, what my own liabilities were; and I know that those were not paid by any personal checks of his drawn by him on a trust company.

Q. Well, do you keep books? A. Beg pardon?

275 Q. Do you keep books? A. Well, I did not keep books in—any books of account in New York. I kept—as to my own expenditures when they came in I knew exactly what they were.

Q. Well, how do you know what he paid of your expenses, as you term it? A. Beg pardon?

Q. Did he render any account to you of what expenses of yours he paid out of these funds? A. At the end of every month I kept a statement of every personal expense of mine, and I turned in that statement of personal expenses of mine to the treasurer of the Trust, and that was audited and my items were delivered up to them as an itemized statement for the purpose of their audit of my expenses, so that I knew within $5, I might say,

276 any month of what my personal expenses were in connection with my work and private life and family life, and everything else.

Q. And it is your testimony now that your intent and purpose was, apart from the question of what the legal authority was that you gave your son—your intent and purpose was that he should pay out of those accounts under this power only these items of personal expense that you tendered him? A. Absolutely, except this one.

Q. Your answer is yes? A. Please repeat that.

Q. Apart from the question of what his legal authority was under the power you gave him, I understand you say now that your intent and purpose was that he should pay out of those accounts only the personal expenses which you handed to him or mailed to him? A. I never mailed anything to him.

Q. Well, how did he get it? A. How did he what?

Q. How did he get these items that you designed he should pay out of this account? You were in all parts of the world? A. At times, yes, but the items 278
are so limited—there was my private secretary, there was a certain amount allowed my butler each month to pay the household expenses, which he attended to—my son did not attend to the household expense; and then there were small items coming in. If I remember correctly, I paid the telephone bill, because I had that put in. I was not allowed a telephone in my work; and a very few items of that kind. So far as the Guaranty Trust Company's account was concerned, the valid checks drawn on that were very, very few, indeed. That was not an account which we used for personal expenditures.

Q. I will have to ask the Court to strike out your characterization of "valid." A. Well, may I change 279
that? So far as the checks which went for any legitimate purpose of mine or to pay any liability of mine——

Q. (Interposing) So far as you know? A. So far as I know—and I know the whole thing clearly.

Q. And yet you do not know what he did with the proceeds? A. Simply because all the checks which he drew are in the possession of the Empire

Trust Company, and I have never seen them, but I presume he took them back, and I have not seen them.

Q. The terms of the power to the agents of the Bank of Montreal, under the terms of that power you authorized your attorney-in-fact to receive all the paid checks and sign all the bank's forms of settlement of balance, ratifying all that he might do in the premises?

Mr. Hughes: I object to this as incompetent, immaterial and irrelevant.

Mr. Veeder: They are in evidence.

281 Mr. Hughes: Yes, but that question is not material. The witness has told you about the canceled checks on the Empire Trust Company. This power of attorney relates to canceled checks on the Bank of Montreal.

Mr. Veeder: I know. I asked the question.

The Witness: Will you please repeat it?

Mr. Veeder: Read it, Mr. Stenographer. (Question read.)

Mr. Hughes: I withdraw the objection.

A. I signed that power of attorney that you are

282 quoting, yes.

Q. And he did—your son did—in the exercise of that power receive all the paid checks? A. I ascertained so since his disappearance. I had no knowledge of it before.

Q. It was a period of three years, was it not, when he held this power? Did you ever examine these vouchers yourself?

Mr. Hughes: I object. What materiality has this?

The Court: It is cross-examination. Overruled.

Mr. Hughes: Exception.

A. Except for——

Q. (Interposing) How do you answer, yes or no? A. If you will allow me—will you put it again?

Q. Will you first answer that categorically? A. Will you please repeat it? I will answer it categorically if I can, yes.

Q. During the period of, we will call it, three years in which your son held this power and this right did you ever yourself examine the canceled vouchers or examine the state of the account? A. 284
No, so far as my memory goes I never saw them.

Q. Well, how about the Guaranty Trust Company, did you entrust the same duty to him on that account? A. No.

Q. You examined it yourself, did you? A. I never received an account from the Guaranty Trust Company. I never received a check and I never examined one until after his disappearance.

Q. Well, do you know whether he did? A. I am informed by somebody since this litigation begun—I have heard the suggestion—in fact, they have pleaded, I think——

Q. (Interposing) Well, you have had negotiations with the Guaranty Trust Company, I suppose, 285
since this cause of action arose, and have you ever asked them whether they have these canceled vouchers there yet? A. The vouchers or checks?

Q. Yes. A. The checks that were drawn were found in this iron box, as I told you.

Q. You never examined the account yourself at all? A. I never received any account from the Guaranty Trust Company.

Q. Well, you never examined them? A. Therefore I never examined them, because I never had them in my hands until after the disappearance of my son.

Q. Now, you have brought a suit against the Guaranty Trust Company? A. Yes.

Q. For some of the checks on which this complaint is based? A. Yes.

Q. That includes some of the checks on which you are suing in this case? A. Yes. I think the Guaranty Trust Company checks, which are included in this list of twenty-one, also enter into
287 a suit with other items of the Guaranty Trust Company.

Mr. Veeder: Now, your Honor, that is all for the present. I cannot say whether I want to cross-examine on these stubs here until I examine them. I would like to reserve that right.

The Court: Yes.

The Witness: I would like to make just one explanation. May I make an explanation?

Mr. Veeder: I cannot tell until I hear it.

The Witness: Well, it is in your favor.

The Court: You mean you want to modify
288 some of your testimony?

The Witness: Yes. I mean to say there was one thing——

Mr. Veeder (interposing): Very well, let us have it.

The Witness: In going through the deposits at the Empire Trust Company I found a deposit made on August 2, 1916, of $2500

Mr. Hughes: A deposit where?

The Witness: In the Guaranty Trust Company in my account I found a deposit on August 2, 1916, of $2,500, and I have been unable to find anything coming in to me at that date like coupons, or anything like that, which would amount to $2500 on or about that date. Further looking it down, I find that on or about that date there was a debit item in C. H. Cahan, Jr.'s, Empire Trust account. I thought that I was in honor bound to point that out, because the Empire Trust Company could readily trace through their books, no doubt, as to whether that may possibly have been a check drawn by C. H. Cahan, Jr., on his account and put into my account in the Guaranty Trust Company. It may be some other item, but I think that this may be the transaction, just looking at it on the surface. Check No. 387, of August 1st—— 290

Mr. Hughes (interposing): May I interrupt here? I just wish to interrupt long enough to say, your Honor, that the plaintiff, of course, contends that whether this went into the Guaranty Trust Company or not, whether this debit item of $2500 on the Empire Trust Company account is the same item that went into the Guaranty Trust Company account of the plaintiff is immaterial, and that in any event it would not be a set-off against the liability of the Empire Trust Company in this case; and we offer this explanation with that reservation of our legal rights. We felt, however, that while the plaintiff did not know one way or the other whether that was the same item that the 291

Mr. Hughes: That is all.

The Court: Is that your case?

Mr. Hughes: I think that is our case, except for the transcript of that account.

The Court: Then subject to the offering of the transcript of the other bank account in evidence and subject also to Judge Veeder's cross-examination is that the entire case?

Mr. Veeder: No, your Honor. We propose to offer something.

The Court: Then do you wish to wait until to-morrow and complete your cross-examination after examining these records?

299

Mr. Veeder: It will only take a very few moments, your Honor. We have the witnesses here, both of them.

The Court: Then go right ahead. Subject to the introduction in evidence of the bank account—the other transcript—the plaintiff rests?

Mr. Hughes: Yes, your Honor. Of course, if the defendant were going to carry over his evidence until to-morrow I would prefer to have the opportunity——

The Court (Interposing): We will treat the matter very informally. If you find over night some evidence you wish to introduce you may do so.

300

Mr. Hughes: I thank your Honor very much. Subject to that we rest.

PLAINTIFF RESTS.

301

DAVID C. BANKS, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. Allen.

Q. Mr. Banks, what is your occupation? A. Auditor, Empire Trust Company.

Q. How long have you been connected with the Empire Trust Company, about? A. Since March, 1913.

Q. And you have been auditor how long? A. For the past two years.

302

Q. And prior to that what was your position? A. In charge of the auditing department without the title.

Q. They did not have a man of that title at that time? A. No.

Q. But you were in charge of that work? A. Yes.

Q. Now, have you produced here pursuant to subpoena and the notice to produce served by the plaintiff the deposit slips showing the deposit of twenty-one checks which have been offered here in evidence by the plaintiff and marked Plaintiff's Exhibit 5-A to——

Mr. Vedder (interposing): There are only twenty there.

303

Mr. Hughes: Yes.

Q. Yes; 5-A to 5-S, inclusive, together with a twenty-first check that was deposited on or about October 15, 1918, for $2400, making in all a total of twenty-one deposit slips? A. Yes.

Q. Are those the original deposit slips (handing papers to witness)? A. They are.

304 *David C. Banks—For Defendant—Direct.*

Q. And did those deposit slips accompany the various checks, Exhibits 5-A to 5-S, inclusive, and another check for $2400, as shown on the deposit slip of October 15, 1918? A. Yes.

Mr. Allen: I offer those deposit slips in evidence, and if there is no objection I would like to have the photostatic copies marked instead of the originals.

Mr. Hughes: I do not know that sufficient foundation has been laid for the offering of these. I do not understand that the witness has personal knowledge of them. I will re-
305 serve that for the cross-examination, however.

The Court: He produces these as the auditor, and presumably the person in charge of such matters, and from the files of the bank.

Mr. Allen: And he identifies them as the deposit slips relating to the checks which are in evidence.

Mr. Hughes: I will not object to their introduction and will reserve any matters as to the foundation for cross-examination.

Mr. Allen: May I have the copies marked?

The Court: There is no objection to hav-
306 ing the photostatic copies marked in lieu of the originals?

Mr. Hughes: Subject to correction.

The Court: Yes, of course.

Mr. Allen: I think they had better be marked, whatever the number is, with the letters after that, so that they will correspond.

The Clerk: We will have to mark them with the letters of the alphabet.

The Court: Then just reverse the order and say, for instance, A-1 instead of 1-A.

(Papers marked Defendant's Exhibits A, A-1 to A-20, inclusive.)

Q. I show you Plaintiff's Exhibit No. 11, Mr. Banks, which has been introduced here as a photostatic copy of transcript of the account of C. H. Cahan, Jr., with the Empire Trust Company, and reference has been made to certain entries thereon which purport to be under date of July 29, 1916, relating to a deposit of $5,000 and a withdrawal purporting to be on or about the same date of 308
$2,500, and I show you Plaintiff's Exhibt No. 5-A, being check No. 387, dated August 1, 1916, for $5,000, and a deposit slip dated August 2, 1916, for $5,000, Defendant's Exhibit A-19 (handing papers to witness). Will you tell us when that check, Plaintiff's Exhibit No. 5-A, for $5,000 was actually received at the Empire Trust Company as shown by the check and deposit slip? A. On August 2nd.

Q. 1916? A. 1916, yes.

Q. And was there any other check of that amount received to the credit of this account on July 29, 1916? A. No, sir.

Q. On Plaintiff's Exhibit No. 11 is there any date appearing showing the deposit of that $5,000? 309

Mr. Hughes: If your Honor please, on that I think that the transcript speaks for itself.

The Court: It may speak for itself, but he is asking the witness, I presume, to direct attention to any specific item. It is perfectly true that we must take it ourselves and peruse it and after some meditation arrive at some conclusion, but in the interest of

310 *David C. Banks—For Defendant—Direct.*

simplicity and as an aid to the Court I will overrule the objection. The witness can direct our attention to any item he finds.

Mr. Hughes: I doubt if that will result in promoting simplicity.

Q. Will you explain that entry of $5,000 and from the deposit slip and the check itself tell us what was the correct date of that entry? A. The entry should have been made on the ledger on August 2, 1916. The date appearing there is blank.

Q. There is no date opposite the entry of $5,000 on the credit side of that account? A. Not on the
311 ledger sheet.

Q. Not on the ledger sheet? A. No.

Q. But the deposit slip and the check itself shows that the check was received and credit given on August 2, 1916? A. Yes.

Q. Now, there is a debit entry on the ledger sheet, Plaintiff's Exhibit No. 11, for $2,500. Does any date appear on the ledger sheet as to when that debit entry was made? A. There is no date.

Q. Was there anything on the ledger to indicate when that $2,500 was paid? A. It was paid after we received the deposit of $5,000, which occurred on August 2nd.

Q. How do you determine that from the ledger?
312 A. Because the entry follows the $5,000 deposit.

Q. So that it was made on or after August 2nd? A. Yes.

Q. The date of the deposit of the $5,000? A. Yes, sir.

Mr. Allen: You may cross-examine, Mr. Hughes.

Cross-examination by Mr. Hughes.

Q. Do I understand that you testify as of your own knowledge whether that $2,500 came in after—or was paid out, rather, after the $5,000 came in? A. Well, from the exhibit shown, the ledger sheet——

Q. (Interposing) Is it invariable that transactions are entered in order—I mean by that is there never a time when a day will go by without a transaction being entered up? A. None that I know of, sir.

Q. What I mean is whether you do know it yourself—those entries in that ledger are not in your handwriting? A. No, they are not. 314

Q. Do you know in whose handwriting they are? A. I do not recognize the handwriting, no.

Q. Have you any knowledge of that transaction at all? A. Except from the deposit ticket.

Q. That is, you know from the deposit ticket that the $5,000 did not go in until August 2nd? A. Yes, sir.

Q. Have you any knowledge of your own as to when the $2,500 went out? A. No, sir.

Q. Then all your testimony means is, is it not, that if the books were kept correctly, assuming that whoever made that entry performed his duty in the way that he should have, the $2,500 would not be on the line below the $5,000 unless it had gone out subsequently? A. Yes, sir, that is correct. 315

Q. But whether the clerk who made the entry did perform his duty you do not know? A. No, sir, I do not.

Q. Speaking generally, through that account the fact that a date appears as July 29, 1916, there, ordinarily it means, does it not, that until a new

316 *David C. Banks—For Defendant—Cross.*

date is entered in the margin all the transactions have occurred on that date? A. It should, yes.

Q. Now, before we leave that account, it appears that this account of C. H. Cahan, Jr.'s, bore interest, does it not? A. Yes, sir.

Q. And that interest was from time to time credited upon that account to C. H. Cahan, Jr.? A. Well, the conditions are on a minimum balance of $1,000——

Q. (Interposing) That is, interest was payable on a minimum balance of $1,000? A. Yes.

Q. Now, was there any charge where the balance
317 fell below $500? A. I could not tell by the ledger sheet.

Q. Have there been any charges on the ledger sheet against the account by reason of its falling below $500, or below $100, as the case may be? A. There was one charge of April 28, 1916, of $1.

Q. What was the occasion for that charge? A. It is termed "banking privilege."

Q. What does "banking privilege" mean? A. That the account fell below a certain figure. What that figure was the ledger sheet does not tell.

Q. But it is the practice of your bank, is it not, to make a charge of $1 for any month where the account falls below $500? A. I would not say $500. It depends on the account itself—the activity and
318 the nature of the deposits.

Q. But that is one figure— A. Yes.

Q. And to make a larger charge of $2 where it falls below $100? A. Yes.

Q. That is a customary charge also? A. Yes.

Q. Now, will you go forward in that account and see whether you see any other debits against the account by reason of these customary charges or banking privilege charges? A. I find another one on July 27th, $1.

Q. 1916? A. Yes, sir. A further charge on October 30, 1916, of $1. Then November 29, 1916, $1. December 28, 1916, $1. April 27, 1917, $1. May 28, 1917, $1. June 28, 1917, $1. July 31, 1917, $1. September 27, 1917, $1. October 29, 1917, $2. November 28, 1917, $1. December 27, 1917, $2. March 29, 1918, $2. April 30, 1918, $2. November 27, 1918, $1. That is all I recognize.

Q. That is, as I understand it, if this account ran a balance of $1,000 or more it bore interest? A. Yes.

Q. And there are various credits of interest on this account? A. I have not noticed because it is very hard to distinguish interest on a photostat, because the interest appears on the original in red ink, and on a photographic copy it does not appear any different than an ordinary entry. 320

Q. But you can by briefly looking at that ascertain and testify, can you not, that there are credits of interest on the account?

The Court: I do not suppose anyone will contend that they do not appear on the photostatic copy in evidence. Can you tell us if that is the fact?

Mr. Hughes: I would not undertake to say so, your Honor. I would not want the Court to rely upon my statement, because I have not studied the account with enough care. 321

A. I find one credit of $1.92, representing interest to June 25, 1917, credited to the account on June 28, 1917.

Q. Then whether or not there are other credits, that one appears, anyway? A. Yes.

Q. And it appears that the account was an interest bearing account? A. Yes, sir.

322 *David C. Banks—For Defendant—Cross.*

Q. And if the account fell below certain figures, which you have not definitely in mind, these amounts that you have read are charged against it? A. Yes.

Q. Now, I show you a couple of letters dated, respectively—or what purport to be carbon copies of letters dated, respectively, June 25, 1919, and July 11, 1919, purporting to be signed by the assistant secretary, addressed to C. H. Cahan, Jr., in Montreal, and I ask you if those letters were sent to C. H. Cahan, Jr., on those dates (handing papers to witness)? A. Well, I could not testify
323 that they were or were not sent, because they were not——

Q. (Interposing) Not in your department? A. Well, it was sent by Mr. Hudson. His initials appear on the carbon copy. I believe they were sent.

Mr. Allen: We will concede that those are copies of letters sent to C. H. Cahan, Jr.

Mr. Hughes: And this one also (indicating)?

Mr. Allen: Yes, also one of August 4, 1919.

Mr. Hughes: I offer these in evidence.

(Papers marked, respectively, Plaintiff's Exhibits 19, 20 and 21.

324

Q. Now, this first letter reads (reading Exhibit No. 19), and the second one, of July 11, 1919, says (reading Exhibit No. 20). Then I take it that under the practice of the Empire Trust Company, in addition to the requirements that if the account fell below a certain balance, there would be certain charges made in the account—if the account did not keep up to a certain balance the Empire Trust Company preferred not to have it at all in that case? A. Yes, sir.

325

Q. And these letters were written advising him that he could take it elsewhere? A. Yes, sir.

Q. Now, in regard to these deposit slips which you have identified, not everything that appears on these slips appeared on them at the time that C. H. Cahan, Jr., presented the funds for deposit to the Empire Trust Company, did it? A. No, sir.

Q. Will you tell me as to those what appeared on the slips at the time they were presented to the Empire Trust Company and what was written on by the officials of the Trust Company themselves? A. Do you want it as of all these?

Q. Yes.

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Mr. Allen: And give the date on each one and the exhibit number.

The Court: Yes. Just take the first one and say, "Deposit slip so and so and Exhibit number so and so," with the words and figures, whatever it may be, were put on by an officer or an employee of the defendant and not by the depositor, if that be the fact.

Mr. Vessler: Your Honor, it is quite apparent that we are going to run considerably over your hour for adjournment. It will be convenient so far as I am concerned to stop at any time.

The Court: Then we will recess now until to-morrow morning at 10.30.

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(Adjourned to Thursday, December 20, 1923, at 10.30 A. M.)

New York, December 20, 1923.

DAVID C. BANKS resumed the stand.

Cross-examination (continued) by Mr. Hughes.

Q. Mr. Banks, directing your attention again to the deposit and withdrawal which on this transcript of the account of C. H. Cahan, Jr., were apparently dated July 29, 1916, I would like to direct your attention to the withdrawal and ask you what the letters "Acc." in the margin of that account indicate (handing paper to witness)? A.
329 An acceptance or a certified check.

Q. That is, that was a check drawn by C. H. Cahan, Jr., on his account with you? A. Yes, sir.

Q. Which you certified? A. Yes.

Q. Or accepted? A. Yes.

Q. Have you any book of accounts in the Empire Trust Company showing on what date the acceptance was given—on what date that check was certified? A. Yes, sir.

Q. And have you that here? A. Yes, sir, I think so.

Q. Will you produce it? A. Yes.

(Book handed to the witness by Mr. Al-
330 len.)

The Witness: Here is the record, Mr. Hughes (exhibiting). I will show you the entry.

Q. That does not show the date? A. Yes, sir, at the top of the page it shows the date, "8/2."

Q. "8/2"? A. Yes.

Q. That indicates to you that that check was accepted or certified on August 2, 1916; is that correct? A. Yes, sir.

Q. Now, Mr. Banks, looking at Plaintiff's Exhibit No. 5-A, the check on the Bank of Montreal, No. 387, to the order of C. H. Cahan, Jr., for $5,000, it appears from the stamp on the back of that check that that was taken into the account on August 2nd, does it not (handing paper to witness)? A. Yes, sir, received by us on the 2nd.

Q. Then the deposit of this check, Plaintiff's Exhibit 5-A, and according to the record from which you have just testified, the withdrawal of $2,500 occurred on the same day? A. Yes.

Q. And do I understand your testimony of yesterday to be to the effect that the only thing on this 332
transcript of the account that indicates to your mind that the withdrawal was subsequent to the deposit is the fact that the withdrawal took place—I mean that the withdrawal is entered on a line following the entry of the deposit (handing papers to witness)? A. Yes, sir; the deposit was received first, and then a check paid against it, yes.

Q. But there is nothing in the records of the Empire Trust Company to show that the deposit was prior to the withdrawal except the fact that on this transcript of the account the withdrawal is entered on a line following the line on which the deposit is entered? A. That is all, yes.

Q. Now, directing your attention to a couple of other instances of the same general nature, I will 333
ask you to look at this account of date April 12, 1917 (handing paper to witness). A. Yes, sir.

Q. There appear on April 12th, do there not, a withdrawal in the sum of $456 and a deposit to the amount of $500? A. Yes, sir.

Q. Both on April 12, 1917? A. They are posted here as three items, one of $56 and one of $400 on the checks, and then a deposit—separate entries.

Q. I see. Separate entries? A. Yes.

Q. Now, having in mind the withdrawal of $56 and the balance in the account at the close of the preceding day, if the $500 deposit had not been made on April 12, 1917, the $400 withdrawal would have created an overdraft, would it not? A. The account would not be good for $400.

Q. That is, if that check had been paid? A. Yes.

Q. It would have created an overdraft? A. Yes.

Q. Again, is it the fact that the only thing in the records of the Empire Trust Company that indicates that the withdrawal was subsequent to the deposit is the fact that the withdrawal of $400 is
335 shown on the line subsequent to the deposit of $500? A. Yes, sir.

Q. Now, again, on May 26, 1917, at the close of business on May 24th there appears to have been a balance of $95.94, does there not? A. On May 24th, was that?

Q. At the close of business on May 24th. A. Yes, $95.94.

Q. Then on May 25th there was a deposit of $750? A. On the 26th.

Q. Yes, on the 26th. A. Yes, $750.

Q. $750? A. Yes.

Q. And a withdrawal of $210? A. Yes.

Q. Each on that day? A. Yes.

Q. And having in mind the balance on hand at
336 the close of the preceding day the withdrawal of $210, if paid, would have created an overdraft, except for the deposit of the $750 check? A. Yes.

Q. And, again, I take it, the records of the Empire Trust Company contain nothing to show that the withdrawal was in fact subsequent to the deposit, except that it appears on a subsequent line of the transcript? A. Unless I refer to the deposit ticket for a mail deposit. That would show.

Q. Well, I will show you the deposit ticket. A. That is May 26th.

Q. Does that indicate a mail deposit (handing Defendant's Exhibit A-6 to witness)? A. No, sir.

Q. Now, one more instance: On December 9, 1915, there was a withdrawal of $550 and a deposit of $488.19, was there not, both on that day (handing paper to witness)? A. Yes, sir.

Q. And in that case the withdrawal is on the line preceding the deposit? A. Yes, sir, it is.

Q. So that in your original records an overdraft is indicated by a red figure in the third column of $433.37, is there not? A. During a part of the day, yes. 338

Q. Yes. And, again, so far as the records of the Empire Trust Company show the fact that the credit is on the line subsequent to the debit indicates that the credit occurred after the debit, and so for a part of that day at least there was an overdraft; is that the fact? A. Not necessarily. The deposit, while posted at that time, probably was in before the check was paid.

Q. Why "probably"? A. Because of the system of posting the deposits. Deposits are posted after we post our exchanges—exchanges being the Clearing House items. They arrive at the bank shortly before 11 o'clock and they are then posted within an hour or an hour and a half, and after that the credits or deposits are posted. 339

Q. Well, then, what is the significance of the line on which the entries are made? That is, as I understand it, your testimony that there was no overdraft in these three other cases that I have stated rests entirely on the fact that the deposit is shown on the line preceding the withdrawal? A. Yes.

Q. Now, if that system which your testimony indicates means anything, does it not mean that when

the deposit is on a line succeeding the withdrawal that there has been a period there where there was no deposit to meet the withdrawal, and does not the fact that the $433.37 in the third column appears in red figures indicate that there was, in fact, a shortage in the account at that time? A. No; it tends to show that the check was an exchange check presented through the Clearing House, and there might have been a deposit in the bank at the time, but which was not posted until the regular deposit tickets were posted—the regular hour for posting.

341 Q. Well, you have no personal knowledge that that was the fact? A. No.

Q. That is a mere conjecture? A. That is the system in the bank.

Q. But you have no knowledge that this was an exchange item? A. No.

Q. You have no way of knowing what that was? A. No.

Q. And from the system to which you previously testified, the fact that a credit was on a line subsequent to a withdrawal would ordinarily mean that the credit was subsequent to the withdrawal, would it not? A. The posting, but not in receiving. It might not mean in receiving——

342 Q. (Interposing:) Then, going back to the other three instances of which you have said that you were able to testify that the credit was prior to the withdrawal because it appeared on a prior line, is it not also, in view of your most recent testimony, the fact that you cannot tell as to that which took place actually first, but that simply indicates which was posted first? A. Well, we post credits at a certain hour during the day, and it is always after 12 o'clock, and a credit is posted before a debit is

posted. That would show that a check had been presented after the credit was received.

Q. What do you mean by the credit being received? A. The deposit ticket.

Q. The deposit ticket being received? A. Yes; credit and debit in the terms of the bank—credit being a deposit and debit being check drawing.

Q. But you do not think that same system would enable you to testify that in this 1915 instance the credit was after the withdrawal? A. No, I could not so testify.

Q. That is, you could not testify one way or the other about that? A. No, sir.

Q. Now, I will ask you to look at the entry of 344
September 1, 1916, and first ask you what the balance at the close of business on August 30th, which is the day prior to September 1st, so far as there are any entries of dates on this transcript, was (handing paper to witness)? A. The balance on August 30, 1916, was $147.47.

Q. Then what happened on September 1st? A. There was a credit of $2,000 and a charge or check of $300, leaving a balance of $1,847.47.

Q. And in that case you speak of the deposit first. As a matter of fact, they appear on the same line, do they not? A. On the same line, yes.

Q. So that there is nothing in the record there to show which was the first? A. No, sir. 345

Q. And if it should be that the withdrawal was prior to the credit that $300 withdrawal would have created an overdraft, would it not? A. Yes, sir.

Q. Now, having in mind your former testimony, that in the other cases to which I have called your attention the fact that the deposit appeared on the line prior to the withdrawal indicated that the deposit was first, would not this entry in which they

both appeared on the same line indicate that they were—if it indicates anything, indicates that they were contemporaneous? A. I could not tell, because it is the last line of posting on the ledger sheet, and there is no way of telling from the record as to which was received first, because the bookkeeper instead of bringing his balance over on the next sheet just used a short cut and posted both entries on the one line.

Q. Now, is it the practice as soon as a check comes through for payment against the account, or a deposit comes through to the credit of the ac-
347 count, for the bookkeeper, as you have called him, to immediately make an entry in the book of that transaction? A. No, sir.

Q. When, with respect to a receipt of a deposit or the making of a charge against the account is the posting on the book made? A. The check is received in the Clearing House and posted first. Then——

Q. (Interposing) Now, checks received from the Clearing House— A. (Interposing) That is commonly called "exchanges."

Q. What are those, deposits or withdrawals? A. No, checks; checks paid against customer's account, or received for payment against the customer's ac-
348 count, and they are paid first and entered in the ledger first. Then the deposits are entered in the ledger.

Q. Is that done by different clerks? A. No, one bookkeeper posts on his own individual ledger.

Q. Now, let me ask you this: Is the book of which—I have been informed that Plaintiff's Exhibit No. 11 is a photostatic copy—is that the book of original entry? A. Yes, sir.

Q. There is no other book in which these deposits and charges are first entered and then entered into this? A. This book to which you are referring is called a debit and credit book. As a general rule it is entered by the junior clerks—the machine runs, as you see in here, for the matter of proving in this book, and it is posted then on the ledger books.

Mr. Allen: May we have that book marked for identification now, your Honor, so that we will know what he is referring to?

The Court: Yes.

(Book marked Defendant's Exhibit B for 350
Identification.)

Mr. Hughes: Do you want the whole book marked, Mr. Allen?

Mr. Allen: Yes, and then we will point out those parts afterwards.

By Mr. Hughes.

Q. In this book which has been marked Defendant's Exhibit B for Identification are there entries of all checks and not merely the certified checks? A. All checks.

Q. All checks? A. Yes, for the day's work.

Q. This apparently is kept alphabetically? A. 351
Yes, sir.

Q. Then are the entries in this book made prior to their posting in the book of which Plaintiff's Exhibit No. 11 is a photostatic copy? A. Yes.

Q. Then the entries in this book, Defendant's Exhibit B for Identification, being alphabetical, these are not made contemporaneously with the transactions—that is, they are all done at the end of the day? A. No; those are done at the time that

the checks are sent to our bookkeeping department.

Q. Well, how do you get them alphabetically? A. The clerks arrange the checks in alphabetical order, according to ledgers, before posting them on the ledgers.

Q. Well, is this the book in which the entries are physically made for the first time? A. Usually, yes, sir.

Q. I am still unable to see where these items run right along without any appreciable gap between one and the other; how it will be possible to get them in alphabetical order if they were made contemporaneously with the checks coming in or the
353 checks going out. It must be done all together at some subsequent time. A. If you will notice in the accounts there you will see on that ledger—the A to E ledger—there are probably two or three different lots posted, running from A to E, and then at a later part of the day starting over again.

Q. At any rate, entries are not made in this book, which I understand is the first book on which any entry is made— A. (Interposing) Yes.

Q. (Continuing) —as soon as the charge or credit comes through—there is some appreciable time that elapses, and then a lot of them are taken up and entered alphabetically together? A. Yes.

Q. That is, it may be done at various intervals
354 through the day? A. Yes.

Q. But it is done with a bunch of checks all at one time? A. Yes, sir.

Q. Rather than being absolutely chronological when a particular check comes in? A. Yes.

Q. Then the entry is made on the book of which Plaintiff's Exhibit No. 11 is supposed to be a copy after all these entries have been made; is not that so? A. Not all.

Q. Well, for a particular day? A. No.

Q. Is this book being made up concurrently with Defendant's Exhibit B for Identification? A. Yes, sir; as the different lots of checks or deposits which are entered in this book——

Mr. Allen (Interposing) Defendant's Exhibit B for Identification?

The Witness: Yes; they are posted onto the ledger.

Q. As a substantially concurrent matter, or do they not wait until several blocks of entries in Defendant's Exhibit B for Identification have been made and then enter them in the book, Plaintiff's 356
Exhibit No. 11? A. No, sir; they are posted practically at the same time as this exhibit here (indicating).

Mr. Allen: Defendant's Exhibit B for Identification?

The Witness: Yes.

Q. And that takes place at intervals after a sufficient number of checks have come through to make it convenient to enter them all up at once? A. Yes, sir.

Q. So that when entries are made on the same day in the book of which Plaintiff's Exhibit No. 11 is a copy, and on that day there has been both a 357
charge and a credit, to the account, in view of the system of entries which you have just described, it is, as a practical matter, impossible to say with any certainty whether the charge or the credit came first, is it not? A. I could not tell on individual items.

Q. On any individual item? A. No, sir.

Q. And in view of the system of the entry of these matters in the books, the fact that they are

not made immediately after the transaction, but a block of several are collected and all entered at the same time regardless of the chronology, the fact that a credit appears on a line preceding a debit is not of very much significance, is it? A. Yes, sir, it is to me, because in the system it shows that it was received—the deposit was received and posted before the check was received and posted by the bookkeeper.

Q. Posted, yes, but when the transaction happened it does not show at all, does it? A. No, sir.

Q. And, in fact, if there had been a charge and a credit on the same day, and if, in fact, the charge had preceded the credit, would it not, even so, have been natural for a bookkeeper entering the two transactions at the same time to put the credit ahead of the charge, so that the account would not show an apparent overdraft? A. No, sir.

Q. It would not? A. No, sir. The system is that if they are posting charges or checks they will complete those entries before they will post the deposit tickets or credits.

Q. Do they not do it at the same time? A. No, sir; checks and deposits are not posted at the same time.

Q. Now, coming back to this item of September 1st, in which they appear on the same line, you think those two entries were not made at the same time there? A. No, sir.

Q. That does not indicate to you that the charge and the credit were contemporaneous? A. No, sir.

Q. In fact, it does not indicate anything—you cannot tell which was first? A. No, I could not tell from the entries.

Q. Now, looking at these checks, Plaintiff's Exhibits Nos. 5 to 58, inclusive, and the deposit

tickets, Defendant's Exhibits A to A-20, inclusive, these checks were entered on your book, of which Plaintiff's Exhibit No. 11, is a copy, on the day when they were handed in to the bank—to your bank—with a deposit ticket, were they not? A. The checks would not be entered by us; they are on another bank.

Q. I mean the credit. A. Yes, sir, the credit.

Q. I mean the credit would be entered on the day when the check and the deposit ticket were received by the Empire Trust Company? A. Yes, sir.

Q. As matter of fact, the Empire Trust Company did not receive the proceeds of those checks until the next day, did they? A. Clearing House items, you mean? 362

Q. Yes. A. The next day on the Clearing House items, yes.

Q. Well, these are all Clearing House items, are they not, Plaintiff's Exhibits Nos. 5 to 5-8, inclusive (handing papers to witness)? A. Yes, sir.

Q. So that in each case we may take it that when a deposit ticket bears a certain date and an entry is made in this account, Plaintiff's Exhibit No. 11, that so far as these twenty checks are concerned the Empire Trust Company did not actually receive the funds until the day succeeding the date of the deposit ticket and the date on which the credit is printed on Plaintiff's Exhibit No. 11? A. Well, the checks as deposited by the Empire Trust Company in their depositary, the Hanover National Bank, are credited to our account when we deposit them. The funds through the Clearing House are cleared the following day. 363

Q. And that is when the Empire Trust Company actually receives the funds? A. No, sir; the Empire Trust Company deposits them in another bank

for clearing. We are not a member of the Clearing House.

Q. No, and you clear through the Hanover National Bank? A. Yes.

Q. And the Hanover National Bank may credit you on the day of the deposit? A. Yes.

Q. But if anything happens to the check, so that the Hanover National Bank does not get it, then you are liable to the Hanover National Bank? A. Returned the next business day.

Q. So that not until the Hanover National Bank receives the funds through the Clearing House has the Empire Trust Company clearly control of the
365 funds represented by the check so deposited? A. No, sir.

Q. This stamp that appears on all of these checks, to the order of Hanover National Bank, signed "Empire Trust Company," and then, "Received payment through New York Clearing House," with the date, that is stamped the day of the deposit, is it not? A. Yes, sir.

Q. That does not indicate when the funds actually came through the Clearing House? A. Well, that is the Clearing House system. For instance, this morning's clearings at 10 o'clock is the work of the previous day.

Q. Yes, but this stamp is on the day when it is
366 sent in for clearing? A. Yes.

Q. Rather than the day when it is cleared? A. When we receive the check.

Q. When you receive the check? A. Yes.

Q. I want to just call your attention to certain initials or matter on the backs of four of these checks and ask you whether you know what they mean or whom they refer to. Plaintiff's Exhibit No. 54, which is to the order of Empire Trust Com-

pany, on the back appears the rubber stamp endorsement, "Credit account of (blank) with Empire Trust Company," and then written in, "C. H. Cahan, Jr." Do you recognize that handwriting—do you know whose it is (handing paper to witness)? A. Yes, sir.

Q. Whose is it? A. That was our receiving teller at that time.

Q. I see. And those initials underneath? — A. (Interposing) Are the initials of that receiving teller.

Q. They are his initials? A. Yes, sir.

Q. And is the same thing true with respect to the ink part of the endorsement for deposit on the back of Plaintiff's Exhibit No. 5-D, a check of September 30, 1916, to the order of Empire Trust Company (handing paper to witness)? A. Yes, sir, the same person. 368

Q. That is written in by your receiving teller? A. Yes, sir.

Q. Now, the endorsement for deposit on the back of Plaintiff's Exhibit 5-I, which is in handwriting, does that mean anything to you at all (handing paper to witness)? A. No, sir.

Q. Was that written by anybody connected with the bank, so far as you know? A. No, sir.

Q. Do you recognize these initials as the initials of anybody connected with the bank? A. "Per. . .."? 369

Q. Yes. A. I do not recognize them.

Q. Now, on Plaintiff's Exhibit 5-P, under the endorsement, "C. H. Cahan, Jr.," appears "Harry A. Peck." Does "Harry A. Peck" mean anything to you at all—have you ever had any contact with such a person? A. I do not know him.

Q. Do you know whether he was at any time connected with the Empire Trust Company? A. Not to my knowledge.

Q. What are the initials which are scrawled apparently over the endorsement of "Harry A. Peck"—or are they initials? A. To me they look more like a cancellation—just drawing a waved line through the name.

Q. I see. Mr. Banks, has the Empire Trust Company now any of the canceled vouchers of C. H. Cahan, Jr.? A. Not to my knowledge, no, sir.

Q. Has the Trust Company made a search for them? A. Not a specific search, no, sir, but the system is that any and all old vouchers for which we have an address are forwarded by registered mail at least three times during the year.

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Q. And according to your best information and belief the Empire Trust Company has none of those canceled checks now? A. No, sir, we do not.

Q. Now, has the Empire Trust Company any book or any record of any kind which would indicate the names of the payees of any of the checks which C. H. Cahan, Jr., drew on his account? A. No, sir, we do not know. The only exception might have been on certified checks.

Q. Mr. Banks, on these deposit tickets, Defendant's Exhibits A to A 20, inclusive, I want to briefly identify the things on these tickets that are written in by the employees of the Empire Trust Company. On Defendant's Exhibit A 20 the deposit

372 ticket of July 12, 1916, I understand that these initials "C. C." and the "S" with a ring around it are written in by the employees of the Trust Company, are they not? A. And, in addition, the rubber stamp date, July 12th.

Q. The rubber stamp date, July 12th? A. Yes.

Mr. Allen: May I have it indicated that the rubber stamp date is a date towards the bottom of the ticket?

The Witness: Yes.

Mr. Allen: Rather than towards the top.

The Witness: Yes, not the date of the ticket.

By Mr. Hughes.

Q. Then may we take it with regard to all of these deposit tickets that the figure with a circle around it—which indicates the bank on which the check was drawn, does it not? A. Yes, sir.

Q. (Continuing) That that figure as to all of these tickets, the figure with the ring around it, and the rubber stamp of the dates appearing at or near the bottom of the ticket, are inserted by the 374
Trust Company? A. Well, it would not necessarily need to have a ring around it. That just means it is another bank clearing through a third bank.

Q. But the figure, anyway? A. The figure is an indication of the paying bank.

Q. Now, on this deposit ticket of August 2nd, Plaintiff's Exhibit A-19, who wrote on the word "accepted" there? A. Our receiving teller.

Q. And what is the "O.K" with initials? A. O.K. of an officer of the Empire Trust Company.

Q. And who is that officer? A. Mr. Lyon.

Q. Is he in court? A. Yes, sir.

Q. On the slip of September 1st, Defendant's Exhibit A-18, who wrote the word "certified"? A. 375
Well, there are two words "certified" on that. The larger writing toward the bottom is our receiving teller's.

Q. And is the same thing true—that is, that the writing is of your receiving teller—in regard to the word "certified" on Defendant's Exhibit A-17? A. Yes, sir.

Q. And A-16? A. Yes, sir.

Q. And the word, or abbreviation, "Cert.," on A-15? A. Yes.

Q. And the words, "C. C., Agents Bank of Montreal," on A-14? A. Yes, sir.

Q. And with regard to the "C. C.," that means "certified check," does it not? A. Yes, sir.

Q. On Defendant's Exhibit A-13? A. Yes, sir.

Q. And the same initials on Defendant's Exhibit A-12? A. Yes, sir.

Q. And on A-11? A. Yes, sir.

Q. And on A-10? A. Yes, sir.

Q. Now, on Defendant's Exhibit A-9, is there any writing on that deposit ticket in the handwriting of an agent of the Empire Trust Company (handing paper to witness)?

377 A. Yes, sir.

Q. What is that? A. "Own check, cert. on 107."

Q. Do you know whose handwriting that is in? A. Yes, sir; a former receiving teller, who has since died.

Q. Who has since died? A. Yes, sir.

Q. And the letters "C. C.," or the initials "C. C.," on Defendant's Exhibit A-8 is also the handwriting of your receiving teller? A. Yes, sir.

Q. And the same thing as to the "C. C." on A-7? A. Yes, sir.

Q. And on A-6? A. Yes, sir.

Q. And on A-5? A. "C. C. 107."

Q. But the "certfd" is not? A. No, sir.

Q. And also the "C. C." on A-4? A. Yes, sir.

378 Q. And what does this "5" with a ring around it down in the middle of the slip mean? A. That is an interest term.

Q. I see. And the "C. C." on A-3? A. Yes, sir.

Q. Now, with regard to the deposit ticket of September 1, 1917, Defendant's Exhibit A-2, in whose handwriting is all of that deposit ticket (handing paper to witness)? A. A former receiving teller, who has since died.

Q. Who has since died? A. Yes.

Q. And including the name "C. H. Cahan, Jr."? A. Yes, sir.

Q. And that apparently was an item that was received by mail, was it not? A. Yes, sir.

Q. And that notation reads, "For account of C. H. Cahan, Jr., check of C. H. Cahan on Bank of Montreal, New York City, $500"? A. Yes, sir.

Q. In whose handwriting is all of the deposit ticket, Defendant's Exhibit A-1 (handing paper to witness)? A. It appears to be one of our receiving tellers.

Q. Including the name "C. H. Cahan, Jr."? A. Yes, sir.

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Q. So that also apparently was a deposit received by mail? A. Yes, sir.

Q. Now, in regard to Defendant's Exhibit A, the deposit slip of October 15, 1918, what can you tell me as to the writing on that? A. "C. C. 107" was written by our receiving teller, and also rubber stamp right along side of the amount, October 15, 1918.

Q. And in that case the name "C. H. Cahan, Jr.," is apparently a rubber stamp, is it not? A. Yes, sir.

Q. And is there anything to indicate as to this Defendant's Exhibit A one way or the other whether it was a personal deposit or a deposit by mail? A. A personal deposit.

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Q. You think it was? A. Yes, sir.

Q. I call attention to the defendant's answer, paragraph eleven, that these checks, with certain exceptions, were all accepted or certified before they were handed in to the Empire Trust Company for deposit. Is there anything on these checks that would indicate that the certification was prior to the acceptance for deposit? A. Nothing on the checks, no, sir.

Q. What is there, if anything, that would indicate that to you? A. In a few cases your deposits show——

Q. (Interposing) That is, in a few cases there is the word "certified" or "certfd"? A. Yes, sir.

Q. Written in a handwriting other than a handwriting of an agent of the bank? A. Yes, sir.

Q. And that is true as to Defendant's Exhibits A-20, A-18, A-14? A. Yes, sir.

Q. A-5? A. Yes, sir.

Q. Except for those instances just detailed there is nothing on the deposit ticket to show that it was
383 certified at the time it was presented for deposit? A. Not on the deposit ticket, no, sir.

Q. Is there anything anywhere else, except for that deposit ticket, to indicate that? A. The custom of the bank.

Mr. Hughes: I ask that that be stricken out.

Mr. Allen: I submit that is perfectly responsive—"is there anything else?"

The Court: Yes, I think that is responsive to the question.

Mr. Hughes: May I have an exception?

The Court: Yes.

By Mr. Hughes.

384 Q. Do you mean that the bank never sends checks to be certified itself? A. Not for a customer.

Q. Well, suppose in an instance where there was a withdrawal the same day and the withdrawal could not go through without an overdraft unless the check that was coming in was good, might not the bank in that case have it certified itself? A. I believe not. They would not honor the check if the deposit was not good funds.

385

Q. Do you mean that the bank would never, to avoid dishonoring a check, send the deposited check to be certified, to see whether there was the amount there to pay it or not? A. I could not say that they would never, but not to my knowledge.

The Court: You sometimes hold a check, do you not—a customer's check—until a deposited check has gone through the Clearing House?

The Witness: On a Clearing House item, yes, because I do not have to give to the check any settlement until about 2.30, and we have until 3 o'clock to return the check.

386

The Court: Instead of honoring the depositor's check—the customer's check at once—you simply defer its payment until you have heard from the Clearing House?

The Witness: Until a deposit is made, you mean?

The Court: Yes.

The Witness: Yes, sir.

Q. But the dates in this transcript, Plaintiff's Exhibit No. 11, on which a debited item appears, is the actual date when the charge was made rather than the date when the check was received, is it not? A. I do not get you on that.

387

Q. Well, when a debit appears here—we will take an arbitrary date—when a debit appears against the account of C. H. Cahan, Jr., say, on March 14, 1916, that is the date when his account was charged and the check of withdrawal on his account is honored, and not the date when that check of withdrawal appears at the bank? A. That would be the same day.

388 *David C. Banks—For Defendant—Cross.*

Q. Well, unless, under his Honor's suggestion, the check had been held? A. It could not be held over the day.

Q. It could not be held over the day? A. No.

Q. Now, in the answer of the Empire Trust Company in this action in paragraph eleven, it is alleged that the plaintiff was never a depositor with the defendant, but that the defendant did know that the Guaranty Trust Company of New York was the depository bank of the plaintiff, and that the authority or power of attorney said C. H. Cahan, Jr., to act was lodged with the Guaranty Trust Company,
389 and that the same is true with respect to the checks drawn on or certified or accepted by the agents of the Bank of Montreal. Do you know, Mr. Banks, how the Empire Trust Company knew that?

Mr. Allen: I object to that as incompetent, irrelevant and immaterial. How can this witness testify as to whoever verified that complaint, what his knowledge was?

Mr. Hughes: I am asking him if he knows. The answer stated that the Empire Trust Company knew. I would like to find out how they knew.

The Court: Well, he may answer it yes or no.

390 Q. Do you know how the Empire Trust Company knew that? A. No, sir.

Mr. Hughes: No further cross-examination.

Mr. Veeder: Now, your Honor, this is Mr. MacKenzie, counsel for the Guaranty Trust Company, and I understand that he will state to the Court that the twenty-first check that we haven't got, alleged in the complaint,

was certified, and that on that statement Mr. Hughes is prepared to concede,—what?

Mr. Hughes: I am prepared to concede, in the interest of saving time and to obviate the necessity of calling the witness, that the proper representative of the Guaranty Trust Company could be called and would testify to that effect.

Mr. Veeder: You do state that, Mr. MacKenzie?

Mr. MacKenzie: Yes, I state that I have caused inquiry to be made as to whether a check, dated the 15th of October, 1918, for $2,400, was certified, and I was informed, after inquiry, that it appeared that that check was certified. 392

The Court: Very well.

Mr. Hughes: May I ask, also, Mr. MacKenzie, for the record, whether there is any record in the Guaranty Trust Company to show whether that check of $2,400 was payable to the order of the Empire Trust Company, or to the order of C. H. Cahan, Jr.?

Mr. MacKenzie: I am told that there is no such record.

The Court: Very well. We will take it that the witness would so testify if called.

Mr. Hughes: Yes. 393

Redirect examination by Mr. Allen.

Q. Mr. Banks, in answer to Mr. Hughes' question to you, whether there was anything on the deposit slips, Defendant's Exhibits A to A-20, or the checks, Plaintiff's Exhibits 5 to 5-8 inclusive, which indicated that these checks were certified at the time of presentation, except on certain four or

five checks mentioned, you stated there was nothing, but that there was a custom of the bank that showed that they were certified at the time of presentation. Will you explain just what that custom was?

Mr. Hughes: I object to that, if your Honor please, any evidence of what the custom was. The answer referring to a custom was left in as responsive to my question, but no question of mine opened the door to any proof of custom.

Mr. Allen: I think it did, when he asked him, "Anything else." That is certainly a
395 broad question, and if he answered with a statement about the custom, I think it is competent to explain it.

The Court: Did not the witness testify to some custom or usage?

Mr. Hughes: He did, and your Honor allowed it to stay in.

The Court: Well, I think I will allow it. As I have said before, with a jury of one—which is, in reality, without a jury—I will take it subject to its being related or connected.

The Witness: What is your question, Mr. Allen?

396 *By Mr. Allen.*

Q. You said there was nothing on these checks or deposit slips, except in those four or five instances enumerated, to show that the check was certified at the time of presentation? A. Yes, sir.

Q. And Mr. Hughes then asked you what was there to show that they had been certified at the time of presentation, if there was anything else that would show it, and you said a custom. Now, what

is that custom? A. It is not the custom of the banker to send out customers' checks for certification, as we would request the customers to have them certified before presenting them.

Q. And according to that custom all of these checks which are marked here "certified," were certified before or at the time of presentation? A. Yes, sir, I believe so.

Mr. Hughes: I object to that as a conclusion. The inquiry was simply how he knew——

The Court: Yes, the Court understands.

398

Q. Now, you have referred to a certain book which has been marked Defendant's Exhibit B for Identification, upon the inquiry of Mr. Hughes as to whether there was any other record showing the withdrawal of $2,500 on or about August 2nd as indicated by a transcript of account, Plaintiff's Exhibit No. 11. What is that book, Defendant's Exhibit B? A. That book is a record of all the checks paid during the current day's business, and all deposits received during the same day.

Q. Has it a name? A. We call it the debit and credit book.

Q. Does more than one clerk or bookkeeper work upon that book? A. It is the junior clerks that type this book on machines. 399

Q. Now, in that book, Defendant's Exhibit B for Identification, you were asked by Mr. Hughes to point out any entry with relation to the withdrawal of $2,500 from the account of C. H. Cahan, Jr., on or about August or the latter part of July or the 1st of August, and you identified a page? A. Yes, sir.

Q. Will you pick that out for me now? A. Yes (handing book to Mr. Allen).

Q. And the date on that page is August 2, 1916, after which follows the words "Sheet 4"? A. Yes.

Mr. Allen: I offer that page in evidence.

Mr. Hughes: If your Honor please, I assume that the purpose of this offer is to prove the entry of debits, among them the "C. H. Cahan," as it is here, $2,500. In view of Mr. Cahan's testimony—in view of the plaintiff's testimony yesterday in which he volunteered the information that there might be such a thing, though he did not know one way or the other, the plaintiff does not desire
401 to urge the objection which it might otherwise urge to the competency of this book; that is, we are perfectly willing that the fact, if it is a fact, should come out. I do desire to urge an objection on the ground of immateriality and irrelevancy; that whether or not this went out does not furnish any set off to the defendant in this case.

(Page marked Defendant's Exhibit C.)

Q. In making up this debit and credit book, the white sheets are used for the debits, and what shall we call it yellow? A. Buff.

Q. The buff sheets used for the credits, is that correct? A. Yes.

402 Q. Now, I notice on the page, Defendant's Exhibit C, that there are apparently different sets of entries running alphabetically from A to E. Will you explain how those different sets of entries on the same page, running alphabetically from A to E, would occur, rather than to be continuous—a continuous page, A to E? A. It is the method in which the checks are sent to our bookkeeping department by our tellers. The different runs of

checks are forwarded to the bookkeepers, and then sorted alphabetically, and according to ledgers, and then run by the debit and credit, and then given to the bookkeeper for posting.

Q. What do you mean by the different runs of checks? A. Machine runs or lists of checks.

Q. And different clerks or juniors take care of different ledgers, is that correct? A. Yes.

Q. And then different clerks make the entries from time to time on this particular book, Defendant's Exhibit B, or does one clerk handle all of the entries relating to depositors whose names commence with the letters of the alphabet from A to E? A. Usually one junior clerk would handle two or 404 three ledgers.

Q. Now, would the fact that this entry of C. H. Cahan, $2,500 on Sheet 4—would the fact that it appeared on Sheet 4, which is next to the last sheet of that day's debit entries, indicate that the debit was made early or late in the day? A. It would seem to indicate that it was a late item—not in the morning exchanges.

Q. Now, in this same book, Defendant's Exhibit B, is there any entry showing a credit to the account of C. H. Cahan, Jr., on August 2nd, of a deposit of $5,000—a check of $5,000 (handing book to witness)? A. Yes, sir, there is a deposit on August 2nd of $5,000 "C. H. Cahan." The "Jr." has been omit- 405 ted in the description.

Mr. Allen: I offer that in evidence (handing book to Mr. Hughes).

Mr. Hughes: That is all right.

(Marked Defendant's Exhibit D.)

By Mr. Allen.

Q. This sheet, Exhibit D, being headed, "Credits A to E," 8/2/16, Sheet 1, is a credit sheet for the 2nd of August, 1916? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. Now, taking into consideration Defendant's Exhibits C and D in the book, Defendant's Exhibit B for Identification, and the entries on Plaintiff's Exhibit No. 11, appearing without any date in the first column, but between the entry of July 29th and August 3rd, can you state whether or not the entries on that transcript relate to these particular items,
407 Exhibits C and D, which you have just referred to? A. Yes, sir, the deposit of $5,000 without date should have been headed or dated August 2nd, and the withdrawal or debit of $2,500 should likewise have been August 2nd,—an error on the part of the bookkeeper.

Q. In examining you upon this transcript of the account of C. H. Cahan, Jr., Plaintiff's Exhibit No. 11, I believe a reference was made to a certain red ink entry—I believe Mr. Hughes spoke of the fact that the original record showed one entry in red ink.

Mr. Hughes: Yes.

408 Q. The photostatic copy would not show the red ink?

The Witness: No, sir, it would not.

Q. That is correct, is it? A. Yes.

Q. But that entry is marked?

Mr. Hughes: I put a red ring around it.

Mr. Allen: Yes.

Q. That entry is marked on Plaintiff's Exhibit No. 11 with this red ring, is that correct? A. Yes, sir.

Q. Now, you have examined the original books, the ledger account, of which Plaintiff's Exhibit No. 11 is a photostatic copy, have you? A. Yes, sir.

Q. Was there any other red ink entry in that account, except this one of December 9th for $433.37? A. There is none other.

Q. Now, will you explain in the system which was in vogue, what a red ink entry in a ledger account means? A. It should mean an overdraft at the close of a day's business.

Q. And if there is no red ink entries in the account, other than this one which you have just referred to, and which we will take up in a minute, would that indicate that there was no overdraft in that account? 410

Mr. Hughes: I object to that, if your Honor please, as incompetent, irrelevant and immaterial. The witness has answered at length with regard to these matters, and the conclusion as to whether there was an overdraft will have to rest on his testimony of the facts.

The Court: I will overrule the objection.

Mr. Hughes: Exception, if your Honor please. 411

The Court: Yes. Of course, it does not prove that there was not an overdraft. It merely indicates that according to the custom of the bank there was no overdraft. Of course, that is not conclusive of the fact; it is his conclusion based upon a custom or usage of the bank's.

Mr. Hughes: I will note my exception.

The Court: Yes. I do not think the Court will be swayed about any evidence about which there might be any question; I hope not, at any rate.

Mr. Allen: Will you read the question, please?

(Question read.)

The Witness: It was.

Q. Now, will you explain just what the system is and was at that time in the bank of entering checks, either credits or debits, in the account from the time the bank opens in the morning? A. The morn-
413 ing Clearing House items or exchanges are received by us from approximately 10:30 to 11 o'clock, and sorted after proving to see that the correct amount is being paid to the clearing House. Then the bookkeepers and assistants sort them alphabetically, and according to ledgers, for posting into the debit and credit book, and from there to the ledgers—respective ledgers.

Q. By "debit and credit book," you mean a book of the same character as Defendant's Exhibit B? A. Yes, sir. Those exchanges or Clearing House items are posted first, and the receiving teller at about 12 o'clock, or shortly thereafter, will send up all the deposit tickets which have been received dur-
414 ing the morning for posting as soon as the bookkeepers have finished posting the exchanges or Clearing House items.

Q. In other words, the deposit items are not sent up to the bookkeeping department for posting until the bookkeeping department has finished with posting the Clearing House items? A. Yes.

Q. And that usually is noontime or shortly thereafter? A. Yes. It is timed so that they will have the deposit tickets for reference as to deposits for

an account, if needed by the bookkeeper, and have them ready for immediate posting after the slips of the morning clearings have been posted. Then after the deposits are posted, the cash items of the tellers and also, later, the deposits of the receiving tellers, are sent to the bookkeeping department for posting.

Q. Now, are the deposits which come in during the day sent up from time to time as they accumulate? A. In different blocks, as we call them. We close them at intervals, and then the receiving tellers on the deposits will forward a block or run of deposit tickets to the bookkeeping department.

Q. In other words, they do not hold them all until 2 or 2.30 o'clock and send them all at once? A. 416
Never.

Q. Now, in the event that a bookkeeper finds that when he is posting the entry which he has made—a charge entry—that it overdraws the account, what, if any, notation would he make, or would he put that in red ink? A. He would refer to the credit or deposit ticket to see if the check was good for payment, and if it was good, showing that it had a deposit to cover that amount, he would post the item and bring out his balance in red ink, if it showed an overdraft.

Q. Yes. A. And then at a later time when he was posting the rest of his credits, that balance would be covered by the deposit being credited to the ac- 417
count.

Q. Now, in these instances to which Mr. Hughes referred, on Plaintiff's Exhibit No. 11—I think I got the dates correctly—April 12, 1917, May 26, 1917, September 1, 1916——

Mr. Hughes: Right.

Q. (Continuing) Is there any entry in the books as shown here by Plaintiff's Exhibit No. 11, that

there was an overdraft at that time on any of those occasions which he questioned you about, except this one of December 9th, which I am going to take up in a moment? A. No, sir, there is none.

Q. And according to the system in the bank, if there had been an overdraft at that time, there would have been an entry in red ink?

Mr. Hughes: I object to that. He is dealing with the facts now. As matter of fact, not even the bookkeeper knows that.

The Court: It does not prove an overdraft; it merely means the custom to which
419 he has testified—that the inference is that there was no overdraft; that if there was an overdraft, something else would have been done.

Mr. Allen: That is all I am asking him.

The Witness: May I have the question?

Mr. Allen: Yes, read it.

The Court: I assume, of course, it is perfectly possible that there might have been an overdraft, and that the custom might not have been adhered to in every case, and I assume if that were true, it might be susceptible of proof; I do not know.

Mr. Hughes: According to the testi-
420 mony, even the bookkeepers would not know whether there had been or not.

The Court: He testified to the custom, which I assume is not a casual thing, that in the ordinary and usual and daily course of business, that an overdraft would have been indicated in such and such a way, and that if there was no such indication on the record, he assumes there was not an overdraft. Was that the invariable custom of the bank?

The Witness: Yes, sir.

Mr. Hughes: Will you note my exception?

The Court: Yes.

Mr. Allen: I do not need an answer, then, to that specific question, in view of your Honor's later question. Now, may I withdraw this witness for a moment, and put Mr. Lyon on?

The Court: Yes.

EDWARD A. LYON, called as a witness on behalf of the defendant, being duly sworn, testified as follows: 422

Direct examination by Mr. Allen.

Q. Mr. Lyon, what is your occupation, sir? A. Treasurer of the Empire Trust Company.

Q. For how long have you been treasurer of the Empire Trust Company? A. A little over a year.

Q. What was your position before that? A. Assistant secretary.

Q. How long were you assistant secretary? A. About ten years.

Q. And in August, 1916, were you assistant secretary at that bank? A. I was.

Q. I show you this check, Plaintiff's Exhibit No. 5-A, and also a photostatic copy of a deposit slip, Defendant's Exhibit A-19 (handing papers to witness). I ask you if your initials appear on either or both of those exhibits? A. They do, sir. 423

Q. On one or both? A. On both.

Q. Will you state why you placed your initials on those, if you recall? A. The check was brought to me for approval in taking it for immediate credit.

Q. Just what do you mean by that? A. Our customer asked to have the item taken as a cash item, and it was brought to me to approve of doing that.

Q. There would be a withdrawal against it? A. So that it could be as cash, and he could get immediate credit for it.

Q. So that he could draw against it immediately? A. Yes.

Q. And that was the reason you placed your initials on both the check and the deposit slip, is that correct? A. Yes.

Q. Now, is there any general custom of the bank, when a customer is depositing a check for immedi-
425 ate withdrawal, that the paying teller or the receiving teller, who receives it, or the paying teller who is to pay out against it, shall consult an officer of the bank and get his O K before so doing? A. That is the custom, yes.

Mr. Allen: You may examine.

Cross examination by Mr. Hughes.

Q. Are not all certified checks received for immediate credit? A. No, sir.

Q. I see. Well, they are credited immediately, are they not? A. Every check is credited immedi-
426 ately on the books.

Q. I see. But even against a certified check you do not allow an immediate withdrawal? A. Not unless it is approved by an officer.

Q. Now, that check has been brought to you specifically for initialing—by whom? The receiving teller, was it? A. By the receiving teller's department, yes.

Q. Did you look particularly at the form of the check? A. I always look at every check before I initial it.

Q. You noted that it was drawn in the name of C. H. Cahan by C. H. Cahan, Jr.? A. I saw the check.

Q. But did that impress itself particularly upon your mind? A. No.

Q. Or, that being drawn in the name of C. H. Cahan, by C. H. Cahan, Jr., it was made payable to C. H. Cahan, Jr. himself? A. No.

Q. That made no impression on you? A. No.

Q. Then, I take it that you made no inquiries of Mr. Cahan, Sr.—Mr. C. H. Cahan—as to whether the check was authorized by him or was proper? A. No, sir.

Q. Did you make any inquiries of any kind of 428
anybody? A. No.

Q. No inquiries at all? A. No.

Q. What do you mean by "immediate credit"? A. So that the check may be taken to the paying teller and cashed, if necessary, if he so desired.

Q. So that it may be drawn upon the same day? A. Yes, sir.

Q. Unless it was initialed for immediate credit, it could not be drawn upon the same day, is that it? A. We would not pay against it the same day; twenty-four hours clearance.

Q. May I see the check? A. (Handing paper to Mr. Hughes.)

Q. These are your initials? A. Yes, "E. A. L." 429

Mr. Hughes: No further cross-examination.

Mr. Allen: That is all, Mr. Lyon.

Mr. Hughes: Just one moment.

By Mr. Hughes.

Q. Mr. Lyon, I note there are certain other checks amongst these twenty that have been marked in evi-

430 dence, that bear initials. Can you tell me as to any of them whose initials they are, or whether they are any initials of persons connected with the Empire Trust Company? For instance, Plaintiff's Exhibit No. 5-C, two initials on the bottom of the check (handing paper to witness)? A. I do not recognize them, no.

Q. And as to Plaintiff's Exhibit 5-D, two initials at the bottom and one in the upper left-hand corner (handing paper to witness)? A. To the best of my knowledge, they are not connected with the Empire Trust.

431

Mr. Hughes: No further cross-examination.

Mr. Allen: That is all.

(Witness excused.)

Mr. Allen: Shall we adjourn now, your Honor?

The Court: Yes, until about five minutes after two.

Mr. Vesder: Shall we make it later than that? It is immaterial to us.

The Court: Yes, I will say ten minutes after two.

(Recess.)

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Afternoon Session.

David C. Banks, resumed the stand.

Mr. Allen: I offer in evidence carbon copy of a letter of December 20, 1915, addressed to Mr. C. H. Cahan. We understand that this letter was intended to be and was sent to

Mr. C. H. Cahan, Jr. Apparently the "Jr." was left off.

(Paper marked Defendant's Exhibit E.)

Mr. Hughes: No objection, if there is no purpose on the part of the defendant to prove that Mr. C. H. Cahan got that letter?

Mr. Allen: No, no purpose of that sort whatever.

By Mr. Hughes.

Q. Just one word more, Mr. Banks, about this book, Defendant's Exhibit B for Identification. On 434
these pages that have been marked in evidence, Defendant's Exhibits C and D, I am correct in understanding, am I not, that these pages contain records of the transactions of that part—particular part of the day—that particular block of checks there entered, of all depositors; that is, these entries on the pages, Defendant's Exhibits C and D, are not limited to the transactions of C. H. Cahan, Jr.? A. No, sir, they are limited to the A to E ledger—all depositors coming within that ledger.

Q. All depositors from A to E? A. Yes, sir.

Q. I asked you on former cross-examination, whether you know how the Empire Trust Company had knowledge of the powers of attorney lodged with the Guaranty Trust Company and the agents 435
of the Bank of Montreal, and you said you did not know. A. Yes.

Q. I simply wish to ask, in addition, whether you know at all if it was the fact that the Empire Trust Company had any knowledge of those powers of attorney? A. None to my knowledge.

Mr. Hughes: That is all.

Mr. Allen: That is all.

(Witness excused.)

PETER J. DEVLIN, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. Allen.

Q. Mr. Devlin, what is your occupation, sir? A. Assistant secretary of the Empire Trust Company.

Q. And how long have you held that position? A. About a year.

Q. And before that, were you connected with that bank? A. Yes.

437 Q. In what capacity? A. Well, I have been in most every position through the bank.

Q. Were you ever in the loan department? A. Just immediately before that, yes, I was in the loan department.

Q. How long were you in the loan department? A. Oh, about five or six years.

Q. Were you in the loan department in the years 1915 and 1916? A. Yes.

Q. And 1917? A. No, not in 1917.

Q. I see. What record, if any—what original record, if any, did the Empire Trust Company keep in the years 1915, 1916, 1917, 1918 and 1919, regarding any loans—what record, if any, original record?

438 A. The original record would be in the loan journal.

Q. Was that kept daily or how? A. Daily.

Q. During that period, the period of those years? A. Yes.

Q. And is still kept? A. Yes, it is still kept.

Q. Now, have you made an examination of the loan journal or the loan journals for the years 1915, 1916, 1917, 1918 and 1919, inclusive—have you examined them? A. Yes, sir.

Q. Is there any record therein of any loan made to C. H. Cahan, Jr.? A. No.

Q. And you have examined them? A. I have.

Mr. Allen: That is all.

Mr. Hughes: No cross-examination.

(Witness excused.)

Mr. Allen: The defendant rests.

DEFENDANT RESTS.

Mr. Hughes: Will you take the stand again, Mr. Cahan.

440

CHARLES HAZLITT CAHAN, the plaintiff, recalled in rebuttal, having been previously duly sworn, further testified as follows.

Direct examination by Mr. Hughes.

Q. Mr. Cahan, I call your attention to your testimony on cross-examination on page 82 of the stenographic minutes (*supra*, pp. 93-94), as follows: "Q. And yet you do not know what he did with the proceeds? A. Simply because all the checks which he drew are in the possession of the Empire Trust Company, and I have never seen them, but I presume he took them back, and I have not seen them." I ask you whether there is anything that you wish to say in amplification or correction of that testimony? A. Yes. Last night I was thinking over that, and I do remember that in some litigation in Montreal there were produced, two of them, I think—it may possibly have been three, but I think it was two checks drawn on the Empire Trust Company

441

account by C. H. Cahan, Jr., which were attached to the vouchers for payments, which were found in his possession. Now, those would either be with my own lawyer in Montreal, or with Mr. McEwen, the attorney of the Home Bank, and I could produce those, but they had skipped my mind entirely; but there were those found. They were payments for considerable amounts, made by him for his own personal account.

Q. Are you able to testify from your recollection of those checks that those which you have seen did not concern your affairs in any way? A. They did
443 not concern me directly or indirectly, and, if necessary, I think I can get them from either one or the other. It is some time ago, and it slipped my memory, but it came back to me again. I think I can produce them, if necessary.

Q. And except for those few checks which you have just mentioned, have you ever had in your possession or have you ever seen any returned checks relating to C. H. Cahan, Jr.'s account with the Empire Trust Company? A. Absolutely none, no.

Q. And have you made a search through his places of residence and anywhere that you thought such canceled checks might be? A. I have made every search possible through all his affairs.

Q. Will you look through these deposit slips, De-
444 fendant's Exhibit A to A-20 inclusive, and tell me, identifying them by the exhibit number on the back, on which ones the words "C. H. Cahan, Jr." under the printed "For account of" are in the handwriting of C. H. Cahan, Jr. (handing papers to witness). A. A-19, A-18—perhaps I am running backwards.

Q. Well, that is the way they happen to be. A. A-8, A-6, A-5. A-1 maybe, but it is so faint that I would not pretend to say; and there is another one, which is A-4, I should not think—I would not ac-

cept it as his, and I am in doubt about A-7 as well. It does not look to me like his.

Mr. Hughes: As to A-1, there has already been testimony that that was written by a teller of the Empire Trust Company.

Q. Now, Mr. Cahan, referring to the matter that was gone into on the case of the Empire Trust Company and the entry in their book, Defendant's Exhibit B for Identification, of the debit against the account of C. H. Cahan, Jr., on August 2nd, 1916, of a check which is entered here as being to "C. H. Cahan," and in connection with the testimony which 446
has been given of a deposit to your credit in the Guaranty Trust Company of $2500 on August 2nd, I wish to ask you if prior to this date of August 2nd, 1916, your son C. H. Cahan, Jr., had drawn checks or otherwise withdrawn from your account in the Guaranty Trust Company other moneys other than the ones which are involved in this suit? A. Yes.

Q. Will you describe them briefly?

Mr. Veeder: I object to the materiality of that.

The Court: Yes, how is that material? It is a mere statement of fact that he has drawn other checks for other purposes. Now, 447
how can it be material to go into the details of those other checks?

Mr. Hughes: I do not care to go into the details particularly. What I had in mind was that the defendant would probably use this evidence to attempt to establish a set-off against the liability here, in view of the fact that they would claim that this $2500 had

gone back into the father's account with the Guaranty Trust Company.

The Court: Yes.

Mr. Hughes: It seemed to me material on that, to show that in other transactions the son had committed defalcations on the Guaranty Trust Company account prior to this transaction, and other than the items involved in this suit, and to an amount very much larger than the $2500 in question.

The Court: That, I suppose, would be a conclusion from the date of the checks antedating August 2nd?

449 Mr. Hughes: Yes.

The Court: So that would be purely a matter of argument on the record.

Mr. Hughes: But those checks are not in evidence.

The Court: You mean the other checks?

Mr. Hughes: Yes, they are not concerned in this litigation.

The Court: You might go into it generally, but I think you should not go into the details.

Mr. Hughes: Merely on what I assume will be a claim of set-off——

Mr. Vesder (interposing): I have no pres-

450 ent intention of making any such claim.

The Court: If the defendant, then, disclaims any intention of claiming it—indeed, it is not set up, is it?

Mr. Vesder: No.

Mr. Hughes: Then, if the defendant disclaims any intention of attempting to use this $2500 item which went into the Guaranty Trust Company, as a set off against any

liability that may be established in this suit, I will not press this inquiry.

Mr. Vesder: Let me make myself perfectly plain, Mr. Hughes. I stated that I had no present intention of making any such claim in this action; but in view of the testimony of Mr. Cahan as to the spoliation of his account, and the fact that I understand he is making similar claims in other cases where funds have been transferred from one bank to another, I base my statements on the testimony in the Canadian case, that in the event of any recovery by him against this 452
bank, we might have occasion hereafter to seek to recoup, and I am not limiting myself in any way except in this particular action.

The Court: But the defendant had not pleaded that in this case?

Mr. Vesder: No.

The Court: Therefore it, ordinarily, would not be a matter that could be adjudicated in this trial; not res adjudicata as to either the plaintiff or the defendant.

Mr. Vesder: That is my view.

Mr. Hughes: Then, it becomes immaterial in this action. What may happen in the future we are not concerned with. That is all, Mr. Cahan. The plaintiff rests. 453

The Court: Both sides rest?

Mr. Vesder: Yes.

Mr. Hughes: Oh, I beg your pardon; just a moment before I rest.

The Court: Yes, you have a bank account to be introduced.

Mr. Hughes: Yes. Well, that is so long, I have found, that I hesitate to encumber the record with it.

Mr. Allen: The agency of the Montreal Bank transcript?

Mr. Hughes: Yes, I do not think there is any necessity of putting it in.

(Informal discussion amongst counsel and the Court, off the record.)

Mr. Hughes: Now, in regard to these powers of attorney——

The Court: Oh, yes, the original powers of attorney.

Mr. Hughes: Yes, the original powers of attorney—inadvertently I put the originals
455 that came from the agency of the Bank of Montreal—had them marked in evidence, and the agents of the Bank of Montreal want them back again, so may we have the copies that were originally marked for identification as Plaintiff's Exhibits 2, 3 and 4 for Identification, marked in evidence as Plaintiff's Exhibits 2, 3 and 4, and substituted for the originals?

The Court: I assume they have been compared, and that counsel agree that they are exact copies?

Mr. Hughes: I think they have been compared by counsel, by both sides.

The Court: Then, the copies that are now
456 marked for identification may be marked in evidence with corresponding numbers.

Mr. Hughes: Those that have been heretofore marked in evidence may be returned to agents of the Bank of Montreal?

The Court: Yes.

Mr. Hughes: I also desire to offer in evidence the letters between the Empire Trust Company and C. H. Cahan, Jr., which have

heretofore been marked Plaintiff's Exhibits 12, 13, 14 and 15 for Identification (handing papers to Mr. Vesder).

Mr. Vesder: Mr. Hughes, what is the materiality of this note collection?

Mr. Hughes: The only materiality is as evidence that they were doing this for the personal account of C. H. Cahan, Jr.

The Court: If it has any force at all, it is merely cumulative.

(Informal discussion amongst counsel and the Court, off the record.)

The Court: They will be received in evi- 458
dence.

Mr. Hughes: And I also desire to offer in evidence the letter of the Empire Trust Company to C. H. Cahan, Sr., August 5, 1920, acknowledging receipt of his formal demand.

Mr. Vesder: No objection.

(Paper marked Plaintiff's Exhibit No. 22.)

Mr. Hughes: Now, the plaintiff rests, and pursuant to the stipulation the plaintiff moves for the direction of a verdict in his favor.

Mr. Vesder: And I move for the direction 459
of a verdict in favor of the defendant.

The Court: Now, do you want to prepare briefs and be heard at length on the matter? I have been giving a little study to this, but I have kept my mind open and free on the proposition. I think it is going to narrow right down to a very clean-cut issue.

Mr. Hughes: There are two different sets of transactions, and slightly different legal

considerations apply to the two; the one in regard to the three checks aggregating $7500, that were drawn to the order of the Empire Trust Company, and deposited in the account of C. H. Cahan, Jr., and then the other seventeen which were drawn to the order of C. H. Cahan, Jr., and by him endorsed to the Empire Trust Company; and then there remains the 21st, in which category we do not know. The plaintiff would like to be heard at length, and particularly in view of your Honor's intimation last night that your first impression
461 was possibly contrary to our contention, on some of the points anyway, we desire to present the matter fully and to argue it fully. We are prepared to argue orally now, if your Honor desires to decide it here, but if your Honor would rather take it under advisement, we would rather prepare a brief and have argument later.

The Court: I will leave it to you.

(Informal discussion amongst counsel and the Court, off the record.)

Mr. Hughes: I had just as soon submit my brief first, and have Judge Veeder answer it, and then reply, if reply be deemed necessary.

462 The Court: You gentlemen agree upon dates for the exchange of your briefs, and then serve your briefs upon my secretary in the Woolworth Building, and then after I have had time to examine them, my secretary will notify both of you as to the hour and place of argument; and, if necessary, I will hear it in my chambers, perhaps after a court day or on Saturday morning. I will be very glad to try and accommodate counsel in that

regard, and I will leave it in that rather indefinite shape.

(Adjourned without date, subject to notice from the Court of the date for argument.)

New York, December 22, 1924.

Present:

Mr. HUGHES,
Mr. VEEDER.

(After informal discussion off the record of the Court's opinion and of the question whether interest on the amount of the checks should be allowed as demanded in the complaint.) 464

The Court: I will direct a verdict for the plaintiff in the sum of $31,170, being the aggregate amount of the checks without interest thereon.

Mr. Veeder: The defendant takes an exception to the direction of this verdict.

Mr. Hughes: The plaintiff takes an exception to the direction of the Court in so far as it fails to direct the inclusion in the verdict of interest on the amounts of the checks as demanded in the complaint.

Pursuant to the Court's direction, the jury of one finds a verdict in the above amount. 465

Mr. Veeder: The defendant takes an exception to the verdict as directed.

Mr. Hughes: The plaintiff takes an exception to the verdict in so far as it fails to include interest on the checks as demanded in the complaint.

466 **Plaintiff's Exhibit 1.**

KNOW ALL MEN BY THESE PRESENTS, that I, Charles H. Cahan, of the City of Montreal, but at present in the City of New York, United States of America, have made, constituted and appointed, and by these presents, do make, constitute and appoint Charles H. Cahan Junior my true and lawful attorney for me and in my name, place and stead, to sign, endorse, deposit, draw, and deliver all such checks and other orders for the payment of money as he may deem proper in connection with any account of funds on deposit which I may now or hereafter have with the GUARANTY TRUST COMPANY OF NEW YORK, its agents, successors or as-
467 signs; giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully, to all intents and purposes, as I myself might or could do if personally present, hereby ratifying and confirming all that my said attorney shall lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the twenty-first day of September in the year one thousand nine hundred and sixteen.

C. H. CAHAN (Seal)

468

Sealed and delivered in
the presence of:

A. C. BOURNE
WILLIAM P. MULLEN

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

BE IT KNOWN, that on the twenty-first day of September one thousand nine hundred and sixteen before me, William P. Mullen, a Notary Public in and for the State of New York duly commissioned and sworn, dwelling in the City of New York, personally came and appeared CHARLES H. CAHAN, to me known, and known to me to be the person described in and who executed the annexed power of Attorney, and acknowledged the execution of the same to be his free act and deed. 470

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal of office, the day and year last above written.

WILLIAM P. MULLEN.
Notary Public New York County No. 396.
New York Registers No. 8304.
(Seal)

471

472 **Plaintiff's Exhibit 2.**

May 29, 1916.

KNOW ALL MEN BY THESE PRESENTS that I, CHARLES H. CAHAN, of the City of Montreal, in the Province of Quebec, Barrister-at law, but at present at the City of New York, in the State of New York, do hereby nominate and appoint CHARLES HAZLITT CAHAN, JUNIOR, as my Attorney, for me, in my name, and on my behalf, to make, sign and draw cheques, on my account with the Agents of the Bank of Montreal, New York City, and to receive all paid cheques, and to sign the said Bank's form of settlement of balances, during the period of two months
473 from the date hereof, hereby ratifying and confirming all that my said Attorney may do in the premises.

IN WITNESS WHEREOF I have hereunto my hand and seal subscribed and set this 29th day of May A. D. 1916.

(Sgd.) C. H. CAHAN

Signed, sealed and delivered
in the presence of:
(Sgd.) M. S. KENDALL

474

Plaintiff's Exhibit 3.

475

July 29, 1916

KNOW ALL MEN BY THESE PRESENTS that I, CHARLES H. CAHAN, of the City of Montreal, in the Province of Quebec, Barrister-at-law, but at present at the City of New York, in the State of New York, do hereby nominate and appoint CHARLES HAZLITT CAHAN, JUNIOR, as my Attorney, for me, in my name, and on my behalf, to make, sign and draw cheques, on my account with the Agents of the Bank of Montreal, New York City, and to receive all paid cheques, and to sign the said Bank's form of settlement of balances, during the period of three months from the date hereof, 476
hereby ratifying and confirming all that my said Attorney may do in the premises.

IN WITNESS WHEREOF, I have hereunto my hand and seal subscribed and set this 29th day of July, A. D. 1916.

(Sgd) C. H. CAHAN

Signed, sealed and delivered
in the presence of:

(Sgd) M. S. KENDALL

477

478 *Plaintiff's Exhibits.*

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } ss.:

On this 31st day of August, A. D. 1916, before me personally came M. S. Kendall, to me known, who, being by me duly sworn, did depose and say, that she is the subscribing witness to the annexed Power of Attorney, and that C. H. Cahan did execute the same in her presence.

(Sgd) M. S. KENDALL

479 Sworn to before me, at the City of New York this 31st day of August A. D. 1916.

(Sgd) ABRAHAM N. LEVY
Com. of Deeds
New York City

480

Plaintiff's Exhibit 4.

481

KNOW ALL MEN BY THESE PRESENTS that I, CHARLES H. CAHAN, of the City of Montreal, in the Province of Quebec, Barrister-at-law, but at present at the City of New York, in the State of New York, do hereby nominate and appoint Charles Hazlitt Cahan, Junior, as my Attorney, for me, in my name, and on my behalf, to make, sign and draw cheques, on my account with the Agents of the Bank of Montreal, New York City, and to receive all paid cheques, and to sign the said Bank's form of settlement of balances, hereby ratifying and confirming all that my said Attorney may do in the premises.

482

IN WITNESS WHEREOF, I have hereunto my hand and seal subscribed and set this 30th day of October A. D. 1916.

C. H. CAHAN (Seal)

Signed, sealed and delivered
in the presence of:

M. S. KENDALL

483

484 *Plaintiff's Exhibits.*

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } ss.:

On this 30th day of October A. D. 1916, before me personally came M. S. Kendall, to me known, who, being my be duly sworn, did depose and say, that she is the subscribing witness to the annexed Power of Attorney, and that C. H. Cahan did execute the same in her presence.

(Sgd) M. S. KENDALL

485 Sworn to before me, at the City of New York, this 30th day of October A. D. 1916.

(Sgd) WILLIAM P. MULLEN
Notary Public
New York County No. 396
New York Registers No. 8304

(Seal)

486

Plaintiff's Exhibit 5. 487

R. Y. Hebden, W. A. Bog, J. T. Molineux, Agents.
NA

No. 371. New York, July 12th 1916.

To the Agents BANK OF MONTREAL
64 Wall St., New York.

Pay to the order of C. H. Cahan Junior One Thousand Dollars through the New York Clearing House.

C. H. CAHAN,
By C. H. CAHAN JR.
His Attorney.

$1000.00 488

(*Stamped across face of check*)

NA Accepted
July 12 1916
Agents Bank of Montreal
AH J. W. Fischer, Agent

(*Endorsements*)

C. H. Cahan Jr.

Pay to the Order of
Hanover National Bank
New York
Empire Trust Co. 489
Myron J. Brown, Secty.

Received Payment
Through
New York Clearing House
Jul 12 1916
Hanover National Bank

490 **Plaintiff's Exhibit 5-A.**

R. Y. Hebden, W. A. Bog, J. T. Molineux, Agents.
NA

No. 387 New York, Aug 1-1916

To the Agents BANK OF MONTREAL
64 Wall St., New York. EAL

Pay to the order of C. H. Cahan, Jr. Five Thousand Dollars through the New York Clearing House.

C. H. CAHAN,
By C. H. CAHAN JR.
491 His Attorney.
$5000 00/100

(Stamped across face of check)

Accepted NA
Aug 1 1916
Agents, Bank of Montreal
AH J. W. Fischer, Agent

(Endorsements)

C. H. Cahan Jr.

Pay to the Order of
Hanover National Bank
New York
492 Empire Trust Co.
Myron J. Brown, Secty.

Received Payment
Through
New York Clearing House
Aug 2 1916
Hanover National Bank

Plaintiff's Exhibit 5-B. 493

R. Y. Hebden, W. A. Bog, J. T. Molineux, Agents.
NA

No. 415. New York, September 1st 1916

To the Agents BANK OF MONTREAL
64 Wall St., New York.

Pay to the order of C. H. Cahan Junior Two Thousand Dollars through the New York Clearing House.

C. H. CAHAN,
By C. H. CAHAN JR.
His Attorney.

$2000.00

(Stamped across face of check) 494

Accepted NA
Sep 1 1916
Agents, Bank of Montreal
AH J. W. Fischer, Agent

(Endorsements)

C. H. Cahan Jr.

City Collection Dept.
Paid
Endorsement Guaranteed
Sep 1 1916
The National City Bank
of New York

495

Pay to the Order of
Hanover National Bank
New York
Empire Trust Co.
Myron J. Brown, Secty.

Received Payment
Through
New York Clearing House
Sep 1 1916
Hanover National Bank

496 **Plaintiff's Exhibit 5-C.**

R. Y. Hebden, W. A. Bog, J. T. Molineux, Agents.

No. 435 New York, September 20th, 1916

To the Agents BANK OF MONTREAL
64 Wall St., New York.

Pay to the order of The Empire Trust Company Thirty Five Hundred Dollars through the New York Clearing House.

C. H. CAHAN,
By C. H. CAHAN JR.
His Attorney.

$3500.00

(Stamped across face of check)

497 Accepted
Sep 20 1916
Agents, Bank of Montreal AC
A. H. Cammack, Agent AC

(Endorsements)

Credit Account of
C. H. Cahan Jr.
With
Empire Trust Company
E N, Teller

Received Payment
Through
New York Clearing House
498 Sep 20 1916
Hanover National Bank

Pay to the Order of
Hanover National Bank
New York
Empire Trust Co.
Myron J. Brown, Secty.

Received Payment
Through
New York Clearing House
Sep 20 1916
Hanover National Bank

Plaintiff's Exhibit 5-D. 499

NA

R. Y. Hebden, W. A. Bog, J. T. Molineux, Agents.

No. 449 New York, Sep 30 1916

To the Agents BANK OF MONTREAL
64 Wall St., New York.

Pay to the order of The Empire Trust Company One Thousand Dollars through the New York Clearing House.

C. H. CAHAN,
By C. H. CAHAN JR.
His Attorney.

$1000 00/100

(Stamped across face of check) 500

Accepted
Sep 30 1916
Agents, Bank of Montreal AH
J. W. Fischer, Agent AC

(Endorsements)

Credit Account of
C. H. Cahan Jr.
With
Empire Trust Company
E N, Teller

Pay to the Order of
Hanover National Bank
New York 501
Empire Trust Co.
Myron J. Brown, Secty.

Received Payment
Through
New York Clearing House
Sep 30 1916
Hanover National Bank

502 **Plaintiff's Exhibit 5-E.**

R. Y. Hebden, W. A. Bog, J. T. Molineux, Agents.
NA
BC

No. 456 New York, Oct 13 1916

To the Agents BANK OF MONTREAL
64 Wall St., New York.

Pay to the order of C. H. Cahan Jr. Six Hundred Seventy Dollars through the New York Clearing House.

C. H. CAHAN,
By C. H. CAHAN JR.
His Attorney.

503 $670 00/100

(Stamped across face of check)

Accepted
Oct 13 1916
Agents, Bank of Montreal
J. W. Fischer, Agent NA

(Endorsements)

C. H. Cahan Jr.

Received Payment
Through
New York Clearing House
Oct 13 1916
Hanover National Bank

504

Pay to the Order of
Hanover National Bank
New York
Empire Trust Co.
Myron J. Brown, Secty.

Received Payment
Through
New York Clearing House
Oct 13 1916
Hanover National Bank

Plaintiff's Exhibit 5-F. 505

R. Y. Hebden, W. A. Bog, J. T. Molineux, Agents.
NA

No. 473 New York, Nov 1 1916

To the Agents BANK OF MONTREAL
64 Wall St., New York.

Pay to the order of C. H. Cahan Junior One Thousand Dollars through the New York Clearing House.

C. H. CAHAN,
By C. H. CAHAN JR. 506
His Attorney.

$1000.00

(Stamped across face of check)

Accepted NA
Nov 1 1916
Agents, Bank of Montreal
A. H. Cammack, Agent AH

(Endorsements)

C. H. Cahan Jr.

Pay to the Order of
Hanover National Bank
New York
Empire Trust Co. 507
Myron J. Brown, Secty.

Received Payment
Through
New York Clearing House
Nov 1 1916
Hanover National Bank

508 **Plaintiff's Exhibit 5-G.**

R. Y. Hebden, W. A. Bog, J. T. Molineux, Agents.
NA

No. 495 New York, Nov 17 1916

To the Agents BANK OF MONTREAL
64 Wall St., New York.

Pay to the order of C. H. Cahan, Junior One Thousand Dollars through the New York Clearing House.

C. H. CAHAN,
By C. H. CAHAN JR.
509 $1000.00 His Attorney.

(Stamped across face of check)

Accepted NA
Nov 20 1916
Agents, Bank of Montreal
J. W. Fischer, Agent AH

(Endorsements)

C. H. Cahan Jr

Pay to the Order of
Hanover National Bank
New York
510 Empire Trust Co.
Myron J. Brown, Secty.

Received Payment
Through
New York Clearing House
Nov 20 1916
Hanover National Bank

Plaintiff's Exhibit 5-H. 511

R. Y. Helsden, W. A. Bog, J. T. Molineux, Agents.
NA

No. 514 New York, November 29th 1916.

To the Agents BANK OF MONTREAL
64 Wall St., New York.

Pay to the order of C. H. Cahan Junior One Thousand Dollars through the New York Clearing House.

C. H. CAHAN,
By C. H. CAHAN JR.
His Attorney.

$1000.00 512

(Stamped across face of check)

Accepted NA
Nov 29 1916
Agents, Bank of Montreal
J. W. Fischer, Agent AH

(Endorsements)

C. H. Cahan Jr.

Pay to the Order of
Hanover National Bank
New York
Empire Trust Co. 513
Myron J. Brown, Secty.

Received Payment
Through
New York Clearing House
Nov 29 1916
Hanover National Bank

514 **Plaintiff's Exhibit 5-I.**

R. Y. Hebden, W. A. Bog, J. T. Molineux, Agents.
NA

No. 569 New York, Jan 2 1917

To the Agents BANK OF MONTREAL
64 Wall St., New York.

Pay to the order of C. H. Cahan Junior One Thousand Dollars through the New York Clearing House.

C. H. CAHAN,
By C. H. CAHAN JR.
His Attorney.

$1000.00

515 *(Stamped across face of check)*

Accepted NA
Jan 2 1917
Agents, Bank of Montreal
J. W. Fischer, Agent AH

(Endorsements)

For Deposit to Credit of
C. H. Cahan, Jr.
at Empire Trust Co.
per M. A. N.

Endorsement Guaranteed
Empire Trust Co.
New York

516

Pay to the Order of
Hanover National Bank
New York
Empire Trust Co.
Myron J. Brown, Secty.

Received Payment
Through
New York Clearing House
Jan 2 1917
Hanover National Bank

Plaintiff's Exhibit 5-J. 517

GUARANTY TRUST COMPANY
OF NEW YORK

No. New York, Jan 3 1917

Pay to the order of The Empire Trust Company
Three Thousand Dollars.

C. H. CAHAN,
By C. H. CAHAN JR.
His Attorney.

$3000.00

18574

(Stamped across face of check) 518

Certified
Jan 3 1917
Payable Through
New York Clearing House
C. H. Meeder

(Endorsements)

C. H. Cahan Jr.

Pay to the Order of
Hanover National Bank
New York
Empire Trust Co.
Myron J. Brown, Secty. 519

Received Payment
Through
New York Clearing House
Jan 3 1917
Hanover National Bank

520 **Plaintiff's Exhibit 5-K.**

GUARANTY TRUST COMPANY
OF NEW YORK

No. New York, January 13th 1917.

Pay to the order of C. H. Cahan Jr. Four Thousand Dollars

C. H. CAHAN,
By C. H. CAHAN JR.
His Attorney.

$4000.00

1998?

521 (*Stamped across face of check*)

Certified
Jan 13 1917
Payable Through
New York Clearing House
C. H. Meeder

(*Endorsements*)

C. H. Cahan Jr

Pay to the Order of
Hanover National Bank
New York
Empire Trust Co.

522 Myron J. Brown, Secty.

Received Payment
Through
New York Clearing House
Jan 13 1917
Hanover National Bank

Plaintiff's Exhibit 5-L. 523

GUARANTY TRUST COMPANY
OF NEW YORK

No. 34 New York, March 22 1917

Pay to the order of C. H. Cahan Junior Five Hundred Dollars.

WD

C. H. CAHAN,
By C. H. CAHAN JR.
His Attorney.

$500.00

29862

524

(*Stamped across face of check*)

Certified
Mar 22 1917
Payable Through
New York Clearing House
C. H. M.

(*Endorsements*)

C. H. Cahan Jr

Pay to the Order of
Hanover National Bank
New York
Empire Trust Co. 525
Myron J. Brown, Secty.

Received Payment
Through
New York Clearing House
Mar 22 1917
Hanover National Bank

526 **Plaintiff's Exhibit 5-M.**

GUARANTY TRUST COMPANY
OF NEW YORK

No. New York, Apr 12 1917

Pay to the order of C. H. Cahan, Jr. Five Hundred Dollars.

C. H. CAHAN,
By C. H. CAHAN JR.
His Attorney.

$500 00/100

33050

527 *(Stamped across face of check)*

Certified
Apr 12 1917
Payable Through
New York Clearing House
C. H. M.

(Endorsements)

C. H. Cahan Jr.

Pay to the Order of
Hanover National Bank
New York
Empire Trust Co.
528 Myron J. Brown, Secty.

Received Payment
Through
New York Clearing House
Apr 12 1917
Hanover National Bank

Plaintiff's Exhibit 5-N. 529

GUARANTY TRUST COMPANY
OF NEW YORK

No. New York, May 26 1917

Pay to the order of C. H. Cahan, Jr. Seven Hundred Fifty Dollars.

C. H. CAHAN,
By C. H. CAHAN JR.
His Attorney.

$750.00

39714

(Stamped across face of check) 530

Certified
May 26 1917 D
Payable Through
New York Clearing House
C. H. Meeder

(Endorsements)

C. H. Cahan Jr.

Pay to the Order of
Hanover National Bank
New York
Empire Trust Co.
Myron J. Brown, Secty. 531

Received Payment
Through
May 26 1917
New York Clearing House
Hanover National Bank

532 **Plaintiff's Exhibit 5-O.**

GUARANTY TRUST COMPANY
OF NEW YORK

No. New York, May 29th 1917

Pay to the order of C. H. Cahan Junior Five Hundred Dollars.

C. H. CAHAN,
By C. H. CAHAN JR.
His Attorney.

$500.00

Charged in former balance.

40044

533

(*Stamped across face of check*)

Certified
May 29 1917
Payable Through D
New York Clearing House
C. H. Meeder

(*Endorsements*)

C. H. Cahan Jr.

Pay to the Order of
Hanover National Bank
New York
534 Empire Trust Co.
Myron J. Brown, Secty.

Received Payment
Through
New York Clearing House
May 29 1917
Hanover National Bank

Plaintiff's Exhibit 5-P. 535

GUARANTY TRUST COMPANY
OF NEW YORK

No. New York, Jul 27 1917

Pay to the order of C. H. Cahan Junior Five Hundred Dollars.
Charged in former balance.

C. H. CAHAN,
By C. H. CAHAN JR.
His Attorney.

$500.00

147901

536

(Stamped across face of check)

Certified
Jul 27 1917
Payable Through
New York Clearing House
C. H. Meeder

(Endorsements)

C. H. Cahan Jr.
Harry A. Peck

Pay to the Order of
Hanover National Bank
New York
Empire Trust Co
Myron J. Brown, Secty.

537

Received Payment
Through
New York Clearing House
Jul 27 1917
Hanover National Bank

538 **Plaintiff's Exhibit 5-Q.**

GUARANTY TRUST COMPANY
OF NEW YORK

No. 39 New York, Aug 20 1917

Pay to the order of C. H. Cahan, Jr. One Thousand Dollars.

C. H. CAHAN,
By C. H. CAHAN JR.
His Attorney.

$1000.00

50741 WD

539 *(Stamped across face of check)*

Certified
Aug 20 1917
Payable Through
New York Clearing House
C. H. Meeder

(Endorsements)

C. H. Cahan Jr.

Pay to the Order of
Hanover National Bank
New York
Empire Trust Co.
540 Myron J. Brown, Secty.

Received Payment
Through
New York Clearing House
Aug 20 1917
Hanover National Bank

Plaintiff's Exhibit 5-R. 541

R. Y. Hebden, W. A. Bog, J. T. Molineux, Agents.
N

No. 123 New York, Aug 31 1917

To the Agents BANK OF MONTREAL
64 Wall St., New York.

Pay to the order of C. H. Cahan Junior Five hundred Dollars through the New York Clearing House.

C. H. CAHAN,
By C. H. CAHAN JR.
His Attorney.

$500.00 542

(*Stamped across face of check*)

Not over Five Hundred $500.00

(*Endorsements*)

For deposit only
to credit of
C. H. Cahan, Junior.

Pay to the Order of
Hanover National Bank
New York
Empire Trust Co.
Myron J. Brown, Secty. 543

Received Payment
Through
New York Clearing House
Sep 1 1917
Hanover National Bank

544 **Plaintiff's Exhibit 5-S.**

R. Y. Hebden, W. A. Bog, J. T. Molineux, Agents.
N

No. 121 New York, September 1st 1917.

To the Agents BANK OF MONTREAL
64 Wall St., New York.

Pay to the order of C. H. Cahan Junior Three hundred and fifty Dollars through the New York Clearing House.

C. H. CAHAN,
By C. H. CAHAN JR.
His Attorney.

$350.00

543 *(Stamped across face of check)*

Not over Three Hundred Fifty $350.00

(Endorsements)

For deposit only
to credit of
C. H. Cahan, Junior.

Pay to the Order of
Hanover National Bank
New York
Empire Trust Co.
Myron J. Brown, Secty.

546 Received Payment
Through
New York Clearing House
Sep 1 1917
Hanover National Bank

Received Payment
Through
New York Clearing House
Sep 1 1917
Hanover National Bank

Plaintiff's Exhibit 6. 547

(Check Stub—Agents Bank of Montreal)

387 Aug. 1, 1916

Guaranty Trust Co. of N. Y. $5000.00

Plaintiff's Exhibit 6-A.

(Check Stub—Agents Bank of Montreal)

415 Sept. 1, 1916

N. Y. Telephone Co. 9.27

548

Plaintiff's Exhibit 6-B.

(Check Stub—Agents Bank of Montreal)

449 Oct. 2, 1916

Guaranty Trust Co. of New York 1000.00

Plaintiff's Exhibit 6-C.

(Check Stub—Agents Bank of Montreal)

456 Oct. 13, 1916 549

Cash for telegrams 6.70

Plaintiff's Exhibit 6-D.

(Check Stub—Agents Bank of Montreal)

473 Nov. 1, 1916

Cash for Box of Cigars 5.25

550 **Plaintiff's Exhibit 6-E.**

(Check Stub—Agents Bank of Montreal)

495 **Nov. 16**

Paid for Notarial Cert. & County Court Clerks fees **1.95**

Plaintiff's Exhibit 6-F.

(Check Stub—Agents Bank of Montreal)

514 **Dec. 1, 1916**

Cash **7.50**

551

Plaintiff's Exhibit 6-G.

(Check Stub—Agents Bank of Montreal)

569 **Jan. 2, 1917**

Cash **5.00**

Plaintiff's Exhibit 6-H.

(Check Stub—Guaranty Trust Company)

552 **No. 34** **Date May 12, 1917**

Pay to J. L. Hetherington to pay for Foley on acct. retaining wall **1000.00**

Plaintiff's Exhibit 6-I.

553

(Check Stubs—Guaranty Trust Company)

No. 37 Dated Jun. 25, 1917

Pay to J. L. Hetherington 1000.00

No. 38 Date June 28, 1917

Pay to Col. B. A. Weston for re St. Math. Sunday School 500.00

No..... Date (Aug. 18, 1918, crossed out) 554

Pay to .....
for .....

Plaintiff's Exhibit 6-J.

(Check Stubs—Guaranty Trust Company)

No. 40 Date July 25, 1917

Pay to Corporation Agencies Ltd.
for Corporation Estates int. to Goyer 2481.18

555

No. 41 Date Jul. 27, 1917

Pay to Collector of Internal Revenue
for income tax 1008.70

No. 42 Date Aug. 2, 1917

Pay to J. L. Hetherington
for to pay certain bills 350.00

556 **Plaintiff's Exhibit 8.**

C. H. CAHAN K.C.
Barrister and Solicitor

Transportation Building
St. James Street

Cables—"Nahac Montreal"
Codes—Liebers
Western Union
Post Office Box 356
Telephone Main 1250-1251

C. H. CAHAN, K.C.

Montreal, Canada.

February 19th, 1920.

The Manager of
The Empire Trust Company,
120 Broadway,
New York, N. Y.

557

Dear Sir:

I recently ascertained that my son, C. H. Cahan, Jr., has, during recent years, misappropriated large sums of money, of part of which I was the owner personally, and a considerable part of which were trust funds.

He has disappeared, and so far we can find no trace of him.

I have had Messrs. Price, Waterhouse & Company investigating the accounts, which he falsified from time to time; and the extent of these defalcations at present appears to amount to $175,000 to $200,000.

558 In a private safe-box of his, I have now found some cancelled cheques concealed, which disclose that he kept a personal account with your Company, the Empire Trust Company, at New York; and that, purporting to act as my Attorney, he has drawn cheques upon my accounts at Guaranty Trust Company of New York and upon the Agents of the Bank of Montreal at New York; and that he has diverted the funds, represented by these

cheques, and misappropriated them to himself by placing these cheques to his personal credit in his personal account with your Trust Company at New York.

These checks are all fraudulently made and issued.

So far, I have discovered the following cheques, all of which purport to be drawn by "C. H. Cahan, by C. H. Cahan, Jr., his Attorney" and all are endorsed "C. H. Cahan, Jr."; and all of these cheques appear, from your Trust Company's endorsements stamped thereon, to have been placed by him to his credit in his personal account with your Trust Company at New York:

Date	Drawee	Payee	Amount
July 12, 1916	Agents of Bank of Montreal, N. Y.	C. H. Cahan, Junior	$1,600.
Aug. 1, 1916	do do do	do do	5,000.
Sept. 1, 1916	do do do	do do	2,000.
Sept. 20, 1916	do do do	The Empire Trust Company	3,500.
Sept. 30, 1916	do do do	do do	1,000.
Oct. 13, 1916	do do do	C. H. Cahan, Junior	670.
Nov. 1, 1916	do do do	do do	1,000.
Nov. 17, 1916	do do do	do do	1,000.
Nov. 29, 1916	do do do	do do	1,000.
Dec. 1, 1916	do do do	do do	1,000.
Jan. 2, 1917	do do do	do do	25.
Jan. 3, 1917	Guaranty Trust Co. of N. Y.	The Empire Trust Company	3,000.
Jan. 13, 1917	do do do	C. H. Cahan, Junior	4,000.
Mar. 22, 1917	do do do	do do	500.
May 26, 1917	do do do	do do	750.
May 29, 1917	do do do	do do	500.
Apr. 12, 1917	do do do	do do	500.
Aug. 31, 1917	Agents of Bank of Montreal, N. Y.	do do	500.
Sept. 1, 1917	do do do	do do	350.
		Total, so far discovered	$27,295.

There are probably other fraudulent cheques of the same kind, as his defalcations in respect of my funds on deposit with the Guaranty Trust Company of New York apparently amount to nearly $40,000.

I will send you the cheques above described for your inspection, if you so desire.

It seems to me that your Trust Company must have had notice, on the face of each of these transactions, that C. H. Cahan, Jr., purporting to act as my Agent or Attorney, was thereby misappropriating my funds, and applying them to his own
563 personal account at your Trust Company, and, through your Trust Company, paying them out for his own personal debts and liabilities.

What may be the legal results of these transactions, and of your notice of them, what may be my rights and your liabilities under American law, I do not at present really know; but I do feel that you should have notice of all the facts so far ascertained by me.

Moreover, I think that under these circumstances, you should furnish me with a complete statement of my son's account at your Trust Company; and thus enable me to ascertain, if possible, how these funds were subsequently applied by my son's cheques on his personal account; and whether
564 any other persons were involved in these frauds and misappropriations.

The matter is a most distressing one for me, and I am so completely surprised and perplexed, so dazed in mind, and withall so financially embarrassed by these defalcations, that I cannot trust my own judgment as to what the legal rights of the parties are in such a case; but I do sincerely hope that you will give me every assistance in your power to the end that I may ascertain all possible

facts in connection with my son's accounts at your New York Office, and to what extent they represent fraudulent transactions in addition to those hereinabove disclosed.

Yours very truly,

C.H.C./W. (Signed) C. H. CAHAN.

Plaintiff's Exhibit 9.

C. H. CAHAN K.C.
Barrister and Solicitor

Transportation Building
St. James Street

Cables—"Nahac Montreal" 566
Codes—Lieber's
Western Union
Post Office Box 356
Telephone Main 1250

Montreal, Canada.

July 22nd, 1920.

Empire Trust Company,
120 Broadway,
New York City,
U. S. A.

Sirs:

In view of the correspondence which has already passed between us, I understand that you decline 567
to pay over to me the moneys amounting to $31,170.00, representing the proceeds of the twenty one checks, hereinafter described, which were wrongfully drawn upon my bank accounts with the Agents of the Bank of Montreal, in the City of New York, or with the Guaranty Trust Company of New York, by C. H. Cahan, Jr., and wrongfully deposited by him to the credit of his personal and

private account with you and thereby converted by him to his own use, with full notice to you of such misappropriation, viz:—

1. Check, No. 371, dated July 12, 1916, for the sum of $1,000, drawn upon the Agents of the Bank of Montreal, in the City of New York, payable to the order of said C. H. Cahan, Jr.

2. Check, No. 387, dated August 1, 1916, for the sum of $5,000 drawn upon the Agents of the Bank of Montreal, in the City of New York, payable to the order of said C. H. Cahan, Jr.

569

3. Check, No. 415, dated September 1, 1916, for the sum of $2,000, drawn upon the Agents of the Bank of Montreal, in the City of New York, payable to the order of said C. H. Cahan, Jr.

4. Check, No. 435, dated September 20, 1916, for the sum of $3,500, drawn upon the Agents of the Bank of Montreal, in the City of New York, payable to your order.

5. Check, No. 449, dated September 30, 1916, for the sum of $1,000, drawn upon the Agents of the Bank of Montreal, in the City of New York, payable to your order.

570

6. Check, No. 456, dated October 13, 1916, for the sum of $670.00, drawn upon the Agents of the Bank of Montreal, in the City of New York, payable to the order of said C. H. Cahan, Jr.

7. Check, No. 473, dated November 1, 1916, for the sum of $1,000, drawn upon the Agents of the Bank of Montreal, in the City of New

York, payable to the order of said C. H. Cahan, Jr.

8. Check, No. 495, dated November 17, 1916, for the sum of $1,000, drawn upon the Agents of the Bank of Montreal, in the City of New York, payable to the order of said C. H. Cahan, Jr.

9. Check, No. 514, dated November 29th, 1916, for the sum of $1,000, drawn upon the Agents of the Bank of Montreal, in the City of New York, payable to the order of said C. H. Cahan, Jr.

572

10. Check, No. 569, dated January 2, 1917, for the sum of $1,000, drawn upon the Agents of the Bank of Montreal, in the City of New York, payable to the order of said C. H. Cahan, Jr.

11. Check, dated January 3, 1917, for the sum of $3,000, drawn upon the Guaranty Trust Company of New York, in the City of New York, payable to your order.

12. Check, dated January 13, 1917, for the sum of $4,000, drawn upon the Guaranty Trust Company of New York, in the City of New York, payable to the order of said C. H. Cahan, Jr.

573

13. Check, No. 34, dated March 22, 1917, for the sum of $500, drawn upon the Guaranty Trust Company of New York, in the City of New York, payable to the order of said C. H. Cahan, Jr.

14. Check, dated April 12, 1917, for the sum of $500, drawn upon the Guaranty Trust

Company of New York, in the City of New York, payable to the order of said C. H. Cahan, Jr.

15. Check, dated May 26, 1917, for the sum of $750, drawn upon the Guaranty Trust Company of New York, in the City of New York, payable to the order of said C. H. Cahan, Jr.

16. Check, dated May 29, 1917, for the sum of $500, drawn upon the Guaranty Trust Company of New York, in the City of New York, payable to the order of said C. H. Cahan, Jr.

575 17. Check, dated July 27, 1917, for the sum of $500, drawn upon the Guaranty Trust Company of New York, in the City of New York, payable to the order of said C. H. Cahan, Jr.

18. Check, No. 39, dated August 20, 1917, for the sum of $1,000, drawn upon the Guaranty Trust Company of New York, in the City of New York, payable to the order of said C. H. Cahan, Jr.

19. Check, No. 123, dated August 31, 1917, for the sum of $500, drawn upon the Agents of the Bank of Montreal, in the City of New York, payable to the order of said C. H. Cahan, Jr.

576 20. Check, No. 121, dated September 1, 1917, for the sum of $350, drawn upon the Agents of the Bank of Montreal, in the City of New York, payable to the order of said C. H. Cahan, Jr.

21. Check, dated October 15, 1918, for the sum of $2,400, drawn upon the Guaranty Trust Company of New York, in the City of New York, payable to the order of said C. H. Cahan, Jr., or to your order.

To avoid misunderstanding, however, I hereby make formal demand upon you that you pay over to me the proceeds of said twenty one checks, amounting to $31,170.00, with interest, at the rate of 6% per annum, upon the sum of each of the said checks from the date of its deposit with you.

Yours very truly,

C.H.C.W (Signed) C. H. CAHAN.

Plaintiff's Exhibit 10.

[Guaranty Trust Co.] 578

TRANSCRIPT OF LEDGER ACCOUNT
WITH
C. H. CAHAN
P. O. Box 1848 New York City

Date		*Dr.*	*Cr.*	
1915				
Oct. 4	Opened		10,000.00	
" 25		150.00		
Nov. 4		180.26		
" 17		315.00		
Dec. 26	Int. to Dec. 26, 1915		43.38	
1916				
Jan. 26			66,432.74	579
"		5,000.00		
"		100.00		
Apr. 11		1,000.00		
" 28		400.00		
"		21,300.00		
May 12		1,000.00		
" 17		2,000.00		
June 12		5,000.00		
" 26	Int. to June 26, 1916		514.69	

	July 29		1,000.00	
	Aug. 2			2,500.00
	" 26		2,145.00	
	Sept. 1			3,000.00
	" 27		19,400.00	
	" 29		640.00	
	Oct. 3		1,255.79	
	" 4		12,000.00	
	" 5			711.03
	Nov. 1			4,000.00
	" 2		2,502.81	
	" 3		1,255.79	
	" 20		2,000.00	
	" 25		1,000.00	
	Dec. 1			2,500.00
	" 4		3,255.79	
	" 22		240.00	
	" 26	Int. to Dec. 26, 1916		260.57
	" 29		450.00	
	1917			
	Jan. 2			3,500.00
	" 3		3,000.00	
	" 13		4,000.00	
	" 22		500.00	
	Feb. 1			2,500.00
	" 2		794.83	
	" 3			5,000.00
	" 6			2,500.00
	" 7		7,500.00	
	" 8		1,000.00	
	" 19		1,900.00	
	" 24		33.94	
	Mar. 2			3,500.00
	" 16		1,000.00	
	" 22		850.00	
	Apr. 2			2,500.00
	" 12		500.00	
	" 30			2,500.00

May 16		500.00		
" 26		750.00		
" 29		500.00		
" 31		200.00		
June 1		1,000.00		
" 2			2,500.00	
" 26	Int. to June 26, 1917		48.51	
" 30			2,500.00	
July 7		500.00		
" 27		500.00		
" 31		1,000.00		
" 31		2,481.18		
Aug. 1			3,000.00	
" 1		1,008.70		584
" 9		600.00		
" 20		350.00		
" 20		2,000.00		
" 22			4,000.00	
Sept. 17		500.00		
" 22		500.00		
Oct. 1		400.00		
" 3		500.00		
" 8		500.00		
" 11		500.00		
" 17		500.00		
" 22		500.00		
" 23		500.00		
Nov. 4		750.00		585
Nov. 10		225.00		
" 10		750.00		
" 19		250.00		
" 21		250.00		
" 24		250.00		
Dec. 7		1,000.00		
" 26	Int. to Dec. 26, 1917		52.61	

	1918			
	Jan. 5			5,000.00
	" 8		750.00	
	" 11		850.00	
	" 19		400.00	
	Feb. 6		500.00	
	Feb. 8		1,000.00	
	" 8		500.00	
	Mar. 5	Income tax at the rate of 2% on total amount of all interest credited ($101.12) in 1917	2.02	
387				
	" 14			5,750.00
	" 13		700.00	
	" 19		2,500.00	
	" 19		500.00	
	" 21		2,000.00	
	" 23		500.00	
	Apr. 15		500.00	
		Interest to June 26, 1918		9.92
	Aug. 20			360.00
	" 22		350.00	
	Sept. 12		6.91	
	" 21		2.50	
	Oct. 11		50.00	
388	Oct. 14			2,500.00
	" 15		2,400.00	
	Nov. 7		60.00	
	1919			
	Feb. 8		30.97	
	Mar. 10		125.00	
	Apr. 7		.20	
			137,661.69	137,683.45
				137,661.69
		Balance		21.76

Plaintiff's Exhibit 11.

Interest Rate
2½% if over 2,500
2 " " 1,000

C. H. CAHAN JR.

IN ACCOUNT WITH EMPIRE TRUST COMPANY

Date	Memo	Dr	Cr	Balance	Days	Aggregate	Amount Delayed Beyond One Day	Interest
1915								
Sept 29	New a/c							
	A		2,500	2,500				
30		719.52		1,780.48			25	
		1,500		3,280.48	1	17		
Oct. 2			75	3,355.48	2	23	1	
4			150	3,465.48	2	33	4	
	185 cash	25		3,440.48				
5		959.60	510	2,950.48	1	43	3	
			400					
	600 Canada		900	4,250.48			4	
	A	825		3,425.48			9	
6		415		3,010.48	1	48		
				50.88				
	A		492.88	543.76			5	
7		415.11		128.65	1	49		
		585						
	Cash		450	73.65	1	50		
8		94						
	Cash		50	29.65				
13		105						
	160 cash		560	484.65				
	A	435		49.65			4	
16		21		28.65				
18		387.50						
	375 Canada		412.50	53.65	1	51	4	
19	1,000 cc	25		28.65				
20	500 cash		1,350	1,378.65			11	
	A	304.01		1,074.64				
	A	695.89		378.75	1	55		
21		314.92		63.83	2	57		
22			130	193.83			2	
23		10		183.83	2	61		
26		90		93.83	1	62	72	
		250						
29			325	168.83	2	4	3	
		350						
	Cash		355	173.83				
	A	150		23.83				
30			50	73.83	5	9	1	
Nov 3	600 cash		450	523.83			1	
4		405.15		118.68	1	10		
		170.00						
	15 cash		90	38.68			1	
5			50	88.68			1	
	51 cash		106	194.68			1	
		90.15		104.53				
	A	50		54.53	1	11		
6			100	154.53			2	
		67.50		87.03	2	13		
8			118	205.03			1	
		30		175.03				
	A	115		60.03	1	14		
9			325	385.03			3	

Interest Rate
2½% if over 2,500
2 " " 1,000

C. H. CAHAN Jr.
IN ACCOUNT WITH EMPIRE TRUST COMPANY

Date	Memo.	Dr.	Cr.	Balance	Days	Aggregate	Amount Delayed Beyond One Day	Interest
1915								
Nov 9	Forward			385.03		14	14	
		49.61		335.42				
		278		57.42	1	15		
10		30		27.42				
12	Cash		44	71.42				
		50		21.42				
15	31 cash		58.84	80.26				
		60		20.26				
16			50	70.26	1	16	1	
17			225	295.26			2	
	A	215		80.26	1	17		
18		65		15.26				
19	Cash		55	70.26			1	
		60		10.26				
	Cert		1,000	1,010.26	1	27	10	
20	A	1,000		10.26				
22	Cash		20					
			190				2	
	Cash		70	290.26				
		55		235.26	1	29		
23		4.96		230.30	1	31		
24		205		25.30				
	Cash		150					
	Cash		177	352.30				
	A	303.01		49.29	2	31	30	
26	110 cash	50	260	259.29			3	
	A	200						
	A	102.01		57.28				
27		14		43.28				
29	25 cash	200						
	CC 300		225	68.28	1	1	3	
30		50		18.28				
	Cash		25	43.28				
Dec 4	Cash		50	93.28				
		30		63.28	2	3		
6		31		32.28				
7	40 cash	35	160	157.28			1	
	CC		500	657.28			5	
		500		157.28	1	5		
9		10		147.28				
	CC		579.58	725.86			4	
	A	505						
		75		145.86	1	6		
9		29.23		116.63				
		550		*433.37				
			488.19	54.82	2	8	5	
11	30 cash		63.10	117.92			23	
		65		52.92	3	11		
13	Ck retd							
14	Cost ret check	50		52.42				

Plaintiff's Exhibits.

Interest Rate
2½% if over 2,500
2 " " 1,000

C. H. CAHAN JR.
IN ACCOUNT WITH EMPIRE TRUST COMPANY

Memo	Date	Dr.	Cr.	Balance	Days	Aggregate	Interest Delayed	Net Aggregate
	1915							
Forward	Dec. 14			12.42			61	
Acc on Z-						11	17	
Cash			2,000					
Cash			30					
Acc			20					
		701.63		1,400.79	1	25		
	15	76.75		1,324.04				
Acc		266.06		1,057.98	1	36		
	16	800.		257.98	1	39		
	17	75.		182.98	1	41		
	18	42.		140.98	2	43		
	20	72.10		68.88	1	44		
	21	29.96		38.92	5	44	23	
Cash	26			38.92				
	27		60	98.92	1	1		
	28	100						
Cash			100	98.92	3	4		
	31	42.50		56.42				
Cash			45	101.42	3	7		
	1916							
Cash	Jan 3		60	161.42				
		50		111.42				
Cert ck			606	717.42			6	
Acc		500		217.42	1	9		
	4	180.50		36.92				
CC			280	316.92			3	
		80		236.92	1	11		
	5	20		216.92	1	13		
	6	20		196.92				
10 Cash 2 000 CC			2,050				20	
		2,000		246.92	2	17		
	8		290	536.92			6	
		320		216.92	2	21		
	10	80.55		136.37	1	22		
Cash	11	128		58.37				
Cash			50	108.37	1	23		
Acc Z 80	12		556.23	664.60	1	30	6	
Cash	13		75	739.60				
		160		579.60	1	36		
	14	502.50		77.10				
Cash			50	127.10	3	39		
Cash	17	135	60	52.10	3	42		
CC	20		200	252.10	2	48	2	
	22	175		77.10				
Cash			80	157.10	2	52		
	24	74.61		82.49	1	53		
	25	75		7.49				
Cash			75	82.49	1	54	43	
CC	26		5,100	5,182.49			51	
Acc		800		4,382.49	1	44		
	27	776.60		3,605.89	1	80		
Bkg Exp.	28	1		3,604.89				
CC			150	3,754.89				

Interest Rate
2% if over 1,000

C. H. CAHAN Jr.

IN ACCOUNT WITH EMPIRE TRUST COMPANY

Memo.	Date	Dr	Cr	Balance	Days	Aggregate	Interest Delayed	Net Aggregate
	1916							
Forward	Jan. 28			3,754.89		80	53	
2 Accs		3,570.00		184.89	1	82		
	29	6.48		178.41	3	88		
	Feb. 1		40.	218.41	1	90		
	2	2.29		216.12				
CC			600.	816.12	1	98	6	
	3	2.72		813.40	2	114		
	5	250.		563.40	2	126		
	7	280.50		282.90				
Cash			40.	322.90				
Cash			50.	372.90	1	130		
Cash	8		65.	437.90				
		192.		245.90	1	132		
	9	112.11		133.79	5	137		
	14	133.						
Cash			170.	168.79	1	139		
	15	165.		3.79				
Cash			200.	203.79	1	141		
	16	200.		3.79				
Cash			164.	167.79	1	143		
Cash	17		200.	367.79				
		120.		247.79	1	145		
	18	165.		82.79				
Cash			500.	582.79				
Cash			100.	682.79				
		500.		182.79	1	147		
Cash	19		50.	232.79	2	151		
	21	254.10						
Cash			171.	149.69	2	153		
	23	175.						
Cash			185.	159.69	1	155		
Cash	24	175.	370.	354.69				
Acc		160.		194.69	2	159	59	
	26	23.		171.69	2	4		
	28	4.88		166.81				
Cash			25.	191.81		6		
	29	165.		26.81				
Cash			230.	256.81				
CC			1,827.	2,083.81	1	27	18	
	Mar. 1	5.		2,078.81				
Acc		556.23						
		564.00		958.58	1	37		
	2	292.35		666.23	1	44		
	3	51.		615.23	1	50		
	4	143.70		471.53	2	60		
	6	230.		241.53				
Cash			1,430.	1,671.53	1	77		
	7	95.		1,576.53				
Cash			30.	1,606.53	1	93		
	8	73.37		1,533.16				
Acc		1,000.		533.16				

Interest Rate 2% if over 1,000

C. H. CAHAN JR.
IN ACCOUNT WITH EMPIRE TRUST COMPANY

Memo.	Date	Dr.	Cr.	Balance	Days	Aggregate	Interest Delayed	Net Aggregate
	1916							
Forward	Mar. 8					93		
				531.16	1	98	18	
Cash	9	406.25		124.91				
			75.	199.91	1	100		
Cash	10	96.50		103.41				
			100.	203.41	3	106		
Cash	13	155.50		47.91				
			100.	147.91				
CC		1,500.						
			1,500.	147.91	1	107	15	
CC	14	156.25						
Cash			225.	216.66	2	111		
CC	16		20.	236.66				
			525.	761.66				
CC		500.		261.66	1	114		
Ac	17		1,000.	1,261.66			10	
		1,000.		261.66	1	117	83	
	18	17.		244.66				
		25.		219.66				
		125.		94.66				
			105.	199.66	2	121		
Cash	20	152.49		47.17				
			100.	147.17	1	122		
Cash	21	170.						
			231.17	208.34	2	126		
Coll	23	183.		25.34				
			993.43					
		575.					10	
	25	5.25		443.77	2	134		
	26			438.52	1	138	53	
	27	266.70		171.82	1	4		
	28	150.		21.82	1	6		
Cash			205.	226.82	1	8		
Cash	29	280.	200.	146.82	1	9		
	30	25.		121.82	2	11		
Ca Ck	Apl. 1		2,700.	2,821.82			54	
		75.		2,746.82	2	65		
	3	1,500.		1,246.82				
		500.		746.82	1	72		
	4	372.		374.82				
Cash			20.	394.82	1	76		
Cash	5	80.60		314.22				
			50.	364.22	1	80		
	6	200.		164.22	1	82		
	7	18.		146.22	2	84		
	8	145.		1.22				
Cash			C 150.	151.22	2	88		
	10		70.	221.22	1	90		
Cash	11	125.		96.22				
			50.	146.22	1	91		
Cash	12	10.25		135.97				
	13		125.	260.97	1	94		
	14	6.30		254.67				

Interest Rate
2% if over 1,000

C. H. CAHAN Jr.

IN ACCOUNT WITH EMPIRE TRUST COMPANY

Memo.	Date	Dr	Cr	Balance	Days	Aggregate	Interest Delayed	Net Aggregate
	1916					94		
Forward	Apl. 14			254.67	1	97	54	
	15		50. C	304.67				
		170.		134.67	2	99		
Cash	17		170.	304.67	1	102		
Cash	18		80.	384.67				
		197.		187.67				
50 Cash			49.50	237.17	1	104		
Cash	19		500.	737.17				
		190.		547.17	1	109		
	20	271.		276.17				
		33.75		242.42	1	111		
	21	150.		92.42	1	112		
	22	8.95		83.47	4	116	54	
Cash	26		115.	198.47				
B. P.	28	1.			2	4		
		102.45		94.99				
			C 107.	201.99	1	6		
	29	13.40		188.59	2	10		
	May 1	51.10		137.49				
Cash			35.	172.49	2	14		
	3	54.90		117.59				
Cash			140.	257.59	1	17		
	4	40.		217.59	2	21		
	6	45.		172.59	2	25		
	8	31.		141.59	1	26		
	9	118.70		22.89				
Cash			90.	112.89	2	28		
Cash	11		60.	172.89	1	30		
Cash	12		175.	347.89				
		103.20		244.69				
			25.	269.69	1	33		
	13		100.	369.69				
		208.		161.69	2	37		
	15	100.		61.69				
Cash			110.	171.69				
		1,000.						
CC			1,500.	671.69	1	44	15	
	16	90.		581.69				
		.50		581.19				
		88.		493.19	1	49		
	17	442.		53.19	1	50		
	18	25.		28.19				
			50. C	78.19	1	51		
	19	5.25		72.94				
			50. C	122.94	3	54		
	22	30.		92.94				
			40. C	132.94	1	55		
	23	79.		53.94				
			75. C	128.94	1	56		
	24	65.		63.94				
			50. C	113.94	1	57		
	25	99.08		14.86				

Interest Rate 2% on 1,000

C. H. CAHAN JR.

IN ACCOUNT WITH EMPIRE TRUST COMPANY

Memo	Date	Dr	Cr		Balance	Days	Aggregate	Interest Delayed	Net Aggregate
	1916								
Forward	May 24				24.80				
	25		25.		49.80				
a/c	26	150.	500		399.86	1	4	5	
	27	170.50			229.36	2	8		
	29	30.			199.36				
		1.			198.36	2	18		
	31	75.			123.36				
Cr.			205.		328.36			2	
			4,975.		5,303.36			2	
		10.			5,293.36	1	65	57	
	June 1	300.			4,993.36	1	115		
	2	50.			4,943.36	1	104		
	3	3,401.60			1,541.76				
		5.			1,536.76				
		105.60			1,431.16	2	192		
	5	114.			1,317.16	1	205		
	6	1,054.			263.16	2	208		
	7	100.			163.16				
	7	50.			113.16	2	210		
	9	30.			83.16				
	10	4.			79.16				
	12	75.			4.16				
	13	50.			3.66				
			60.		63.66				
		50.			13.66				
			100.		113.66	3	213		
	16	75.			38.66				
	19		80.		118.66				
		23.75			94.91				
	20	45.			49.91				
	21	1.60			48.31				
	24	30.			18.31	2	213	57	
	26		350.		368.31	1		4	
		34.			334.31	1	3		
	27	125.			209.31				
		3.60			205.71	1	5		
	28	99.45			106.26	1	6		
	29	10.			96.26	2	8		
	July 1	15.			81.26	2	10		
	3	42.			39.26				
			100.	C	139.26	2	12		
	5	105.55			33.71				
		50.	800.	C	783.71	1	30		
	6	452.			331.71				
			500.	C	831.71				
		500.			331.71	4	32		
	10	150.60			181.11	1	34		
	11		70.	C	251.11				
		150.			101.11		35		
a/c	12		1,000.		1,101.11	1	46	10	
	13		25.	C	1,126.11				
		20.			1,106.11				

Interest Rate

C. H. CAHAN Jr.

IN ACCOUNT WITH EMPIRE TRUST COMPANY

Memo.	Date	Dr.	Cr.		Balance	Days	Aggregate	Interest Delayed	Net Aggregate
	1916								
	July 13				1,106.11	1	57		
	14	18.21			1,087.90				
			35.	C	1,122.90	1	67		
	15	1,000.							
		16.60			106.30				
			50.	C	156.30	2	71		
	17	55.			101.30				
	18	186.50							
			260		174.80	1	73		
	19	20.			154.80	1	75		
	20	85			69.80				
			100.	C	169.80	1	77		
	21	50.			119.80	1	78		
	22	7.			112.80	2	80		
	24	42.90			69.90	7	82		
	26		50.	C	119.90	1	1		
	27	35.			84.90				
B. P.		1.			83.90				
			70.	C	153.90	1	3		
	28	83.92			69.98	1	4		
	29		50.	C	119.98				
		70.			49.98				
a/c			5,000.		5,049.98				
Acc		2,500.			2,549.98	5	129		
	Aug. 3	1,100.			1,449.98				
		40.			1,409.98	1	143		
	4	100.			1,309.98	1	156		
	5	100.			1,209.98	2	180		
	7	35.			1,174.98				
		1,037.92			137.06	1	181		
	8	15.			122.06	1	192		
	9	6.65			115.41	1	183		
	10	3.			112.41				
	11	95.			17.41				
			150.	C	167.41				
		20.			147.41	4	187		
	15	50.			97.41				
			80.		177.41	1	189		
	16	100.			77.41				
			50.	C	127.41	3	192		
	19	75.			52.41	2	194		
	21	25.			27.41				
			30.		57.41	1	195		
	23		50.		107.41				
T.		1.61			105.80	1	196		
	23	2.88			102.92	3	199		
	Aug. 26		350.		452.92	2	10		
	28	15.			437.92	1	14		
	29	146.70			291.22	1	17		
	30	103.75			147.47	2	19		
	Sept. 1	300.	2,000.		1,847.47				

Interest Rate
2% if over 1,000

C. H. CAHAN JR.

IN ACCOUNT WITH EMPIRE TRUST COMPANY

Memo.	Date	Dr.	Cr.		Balance	Days	Aggregate	Interest Delayed	Net Aggregate
	1916								
	Sept. 1				1,847.47				
	2	20.			1,827.47	3	73		
	5	823.			1,004.47				
			100.						
			525.	C	1,629.47	1	89		
	6	1,458.			171.47	2	93		
	8		225.	C	396.47	1	97		
	9	175.			221.47	2	101		
	11	20.			201.47				
			50.	C	251.47	1	104		
	12	15.			236.47	1	106		
	13	6.40			230.07	2	112		
	15	20.			210.07	1	114		
	16	38.75			171.32				
		5.			166.32	2	118		
	18	50.75			115.57	1	119		
	19	18.			97.57	1	120		
	20	30.			67.57				
			Certf.						
			3,500.		3,567.57	1	156		
	21	1,000.			2,567.57	1	182		
	22	8.25			2,559.32				
		1,000.			1,559.32	1	198		
	23	353.12			1,206.20	2	222		
	25	1,010.			196.20				
ash			100.		296.20	1	225	20	
	26	106.			190.20				
ash			60.		250.20	1	3		
	27	70.			180.20	1	5		
	28	60.			120.20	2	7		
	30		1,000.		1,120.20	3	40	10	
	Oct. 3	173.50			946.70	1	49		
	4	780.			166.70				
ash			360.		526.70	1	54		
	5	354.			172.70	1	56		
	6	65.			107.70				
ash			50.		157.70	4	64		
	10	6.25			151.45	3	7		
ash	13		70.		161.45				
			670.		891.45	1	79	7	
	14	32.			859.45	2	97		
	16	150.30			709.15				
ash			80.		789.15	1	103		
	17	17.50			771.65	1	113		
	18	577.25			194.40	2	117		
	20	77.			117.40				
			120.		237.40	1	119		
	21	3.20			234.20	2	123		
	23	60.50			173.70	1	123		
	24	25.			148.70				
ah			90.		238.70	1	127		
	25	118.			120.70	1	128	17	
	26		30.		150.70				

Interest Rate
2% if over 1,000

C. H. CAHAN Jr.

IN ACCOUNT WITH EMPIRE TRUST COMPANY

Memo.	Date	Dr.	Cr.	Balance	Days	Aggregate	Interest Delayed	Net Aggregate
	1916							
Forward	Oct. 26			150.70	1	2		
Cash	27		25.	175.70	3	8		
B/P	30	1.		174.70				
		20.		154.70				
Cash			95.	249.70	1	10		
	31	110.50		139.20	1	11		
	Nov 1	20		119.				
Cash			150.					
40 cash 1,000 c/c			1,050.	1,339	1	24	10	
	2	1,050.		289.	1	27		
	3	100.		189.				
Cash			60.	249.	1	29		
Cash	4		60.	309.				
		139.25		170.75	2	33		
Cash	6		75.	245.75	2	37		
Cash	8		200.	445.75				
		92.70		353.05	1	41		
Cash	9		50.	403.05				
		130.		273.05	1	44		
	10	60.		213.05	1	46		
	11	34.35		178.70	2	50		
	13	7.		171.70	1	52		
Cash	14		90.	261.65				
		58.85		102.85	1	54		
	15	25.		107.85	3	60		
	18	75.		92.85	2	62		
C/C	20		1,000.	1,092.85	1	73	10	
	21	46.		1,046.85	1	83	20	
	22	519.75		527.10	1	88		
	23	260.		267.10	3	97	20	
	Nov 26			267.10	1	3		
Cash	27		140.	407.10	1	7		
	28	12.		395.10				
Cash			1,000.	1,395.10	1	21		
	29	75.		1,320.10				
B/P		1.		1,319.10				
C/C			1,000.	2,319.10			20	
		1,000.		1,319.10	2	47		
	Dec. 1	25.		1,294.10	1	60		
	2		200.	C. 1,494.10				
		910.50		683.60	2	74		
	4	250.		433.60	1	78		
	5	113.16		320.44				
Cash			50.	370.44	1	80		
	6	15.60		354.84	1	92		
	7	8.		346.84				
Cash			140.	486.84	1	85		
	8	20.27		466.57	1	89		
	9	112.		354.57	2	92		
	11	15.		339.57	1	93		
Cash	12		50.	389.57				

Interest Rate
2% if over 1,000

C. H. CAHAN Jr.
IN ACCOUNT WITH EMPIRE TRUST COMPANY

Memo.	Date	Dr.	Cr.	Balance	Days	Aggregate	Interest Delayed	Net Aggregate
	1916					93		
Forward	Dec. 12			189.57	1	95	20	
	13	6.50		183.07				
Cash			50	233.07	1	97		
	14	52.50		180.57	1	99		
Cert	15		500	680.57			5	
Acc		400		280.57	1	102		
	16	50		230.57				
Acc		25.12		205.45	2	106		
Cash	18		25	230.45	1	108		
	19	79.50		150.95				
Cash			50	200.95	1	110		
	20	5.12		195.83				
Cash			80	275.83				
Acc		46.34		229.49	1	112		
	21	40.62		188.87				
Cash			100	288.87	1	115		
	22	30		258.87	1	118		
	23		500	758.87			15	
		7.40		751.47				
					3	132	15	
	Dec. 26		250	1,001.47	1	10		
	27	292.50		708.97	1	17		
B/P	28	1		707.97	1	24		
	29	504.22		203.75	1	16		
	30	29.35		174.40	3	25		
	1917							
C/C	Jan. 2		1,000	1,174.40		32		
		139.16		1,035.24	1	42		
	3	586.		449.24				
C/C			3,000	3,449.24	1	76	20	
	4	103.80		3,345.44	1	109		
	5	5		3,340.44	1	142		
	6	1,575.		1,765.44	2	178		
	8	345		1,420.44	1	192		
	9	4.85		1,415.59	1	206		
	10	1,012.		403.59	3	218		
	13		4,000	4,403.59	3	350	80	
	16	50		4,353.59	1	394	110	
	17	35		4,318.59				
Acc		4,000		318.59	1	397		
	18	5		313.59	5	412		
	23	25		288.59	1	415	40	
C/C	24		4,000	4,288.59	2	501	150	351
	26	2,511.90		1,776.69	1	18		
	27	6.08		1,770.61				
	27	100.		1,670.61	2	52		
	29	1,303.37		367.24	1	56		
	30	136.50		230.74	4	64		
Cert	Feb. 3		5,000	5,230.74			100	
A		5,000		230.74	2	68		
C.C.	5		4,521.90	4,752.64			45	

Interest Rate
2% if over 1,000

C. H. CAHAN Jr.

IN ACCOUNT WITH EMPIRE TRUST COMPANY

Memo.	Date	Dr.	Cr.	Balance	Days	Aggregate	Interest Delayed	Net Aggregate
	1917					68		
Forward	Feb. 5			4,752.64	1	110	145	251
	6	100.		4,652.64				
		75.						
Acc		2,500.		2,077.64	1	137		
	7	8.47		2,069.17	1	158		
	8	313.27		1,755.90	2	194		
	10	510.		1,245.90	6	266		
	16	113.60		1,132.30				
		100.		1,032.30	1	276		
	17	330.		682.30	3	297		
	20	8.25		674.05	1	304		
	21	125.		549.05	2	314		
	23	155.		394.05	1	318		
	24	102.		292.05	2	324	145	
	Feb. 26	112.		180.05				
			90 C	270.05	1	3		
	27	51.35		218.70				
			100 C	318.70	1	6		
	28	39.64		279.06				
Cash			100	379.06	2	14		
	Mar 2	850.		29.06				
			994.50	1,023.56			1—	
				321.56	1	19		
	5	9.37		314.19	2	29		
	5	15.		499.19	1	34		
	6	80.		419.19				
		100.		319.19	1	37		
Coll	7		497.50	816.69	1	45	5	
	9	84.		732.69				
		150.		582.69	3	57		
	10	306.		276.69	2	63		
	12	50.		226.69	1	65		
	13	46.81		179.88	1	67		
Cash	14		100	279.88	2	73		
	16	100.		179.88	1	75		
	17		50	229.88				
		100.		129.88	2	77		
	19	125.		4.88				
	20	35.50						
Cash		100.	30.					
Cash			200.	99.38	2	79		
	22	20.		79.38				
Cert			500.	579.38			5	
		50.		529.38	1	84		
	23	315.		214.38				
		100.		114.38	1	85		
A. S. Fleming	24		50.	164.38				351
Int.		100.		64.38	2	87	20	
Cash	26		100.	164.38	1	8		
	27	75.		89.38				

Interest Rate
2% if over 1,000

C. H. CAHAN JR.
IN ACCOUNT WITH EMPIRE TRUST COMPANY

Memo	Date	Dr.	Cr.	Balance	Days	Aggregate	Interest Delayed	Net Aggregate
	1917							
Forward	Mar. 27			89.34		2		351
Cash			100.	189.34				
		90.		99.34	1	3		
	28	31.35		67.99				
Cash			200.					
Cash			200.	467.99	1	8		
	29	50.		417.99a	2	16		
Acc	31	300.						
		33.60		284.39	2	22		
	Apr. 2	150.		134.39	3	25		
	5	14.		120.39				
Cash			40	160.39	1	27		
Cash	6		35.	195.39				
	7	.50			1	29		
		100.		94.89	2	31		
	9	41.67		53.22				
Cash			100.					
			50.	153.72	1	33		
L.	10	73.84		79.88				
	10		40.	119.88	1	34		
	11	50.		69.88				
Cash			81.50	151.38	1	36		
	12	56.		95.38				
Cert			500.	595.38			5	
		400.		195.38	1	38		
Cash	13		37.	232.38				
		37.		195.38	3	44		
	16	15.		180.38	2	48		
	18	15.		165.38				
Cash			57.	222.38	1	50		
	19	100.		122.38				
Cash			40.	162.38	2	54		
	21	51.		111.38	3	57		
Cash	24		60.	171.38	1	59		
	25	57.50		113.88	1	60	5	
	26	15.		98.88				
Cash			900.	998.88	1	10		
R/P	27	1.		997.88				
		400.		597.88	3	28		
	30	25.		572.88				
		75.		497.88	3	43		
	May 3	3.92		493.96				
		70.		423.96	1	47		
	4	217.50		206.46	4	55		
Cash	8		40.	246.46				
		121.08		125.38	2	57		
Cash	10		225.	350.38	1	61		
	11	235.		115.38	1	62		
	12	40.		75.38	3	65		
	15	45.		30.38				
Cash			50.	80.38	2	67		
Cash	17		500.	580.38				

Interest Rate
2% if over 1,000

C. H. CAHAN Jr.

IN ACCOUNT WITH EMPIRE TRUST COMPANY

Memo.	Date	Dr.	Cr.	Balance	Days	Aggregate	Interest Delayed	Net Aggregate
	1917					67		
Forward	May 17			580.38	1	73	5	
	18	504.67		75.71	1	74		
	19		200. C	275.71	2	80		
	21	55.50		220.21	2	84		
	23	25.		195.21	1	86		
	24	110.		85.21				
Cash			75.	160.21				
		64.27		95.94	2	88		351
C/C	26		750.	845.94			8	
		210.		635.94	2	12		
B/P	28	1.		634.94				
		180.		454.94	1	17		
	29	410.		44.94				
C/C			500.	544.94	2	27	10	
	31	65.		479.94	1	32		
	June 1	101.50		378.44				
345 Cash C/C 555			900.	1,278.44			6	
		300.		978.44	1	42		
C/C	2		1,500.	2,478.44			3—	
		270.		2,208.44				
		1,307.50		700.94	3	56		
	6	50.		650.94	1	63		
	5	15.49		635.45	1	69		
	6	14.05		621.40	1	75		
	7	287.45		333.95	2	79		
	9		100.	333.95	2	85		
	11	32.50		301.45	1	94		
	14	40.44		261.01	1	97		
	15	27		234.01				
Cash			500	734.01	1	104		
Cash	16		200	934.01				
		500.		434.01	1	116		
	19	200		234.01				
		50		184.01	1	117		
	20	7.50		176.51	1	119		
	21	24		152.51	1	121		
	22	350.						
Cash			500	302.51	4	133	54	351 198
	25	172.37		130.14				
Cash			500	630.14				
		200.		430.14				
	26	19.50		411.64				
		119.30		292.34	1	3		
	27	50		242.34	1	5		
B/P	28	1.		241.34				
Interest to 25th inc.			1.92	243.26	1	7		
	29	40.		203.26	1	9		
Cash	30		1,000.	1,203.26				
		25.		1,179.26	2	33		
	July 2	50.		1,129.26	1	44		
	1	340.		789.26				

Interest Rate
2% if over 1,000

C. H. CAHAN Jr.

IN ACCOUNT WITH EMPIRE TRUST COMPANY

Memo.	Date	Dr.	Cr.	Balance	Days	Aggregate	Interest Delayed	Net Aggregate
	1917					44		
Forward	July 3			788.26				
Cash			300	1,088.26	2	66		
	5	535.98		552.28				
		56.		496.28	1	71		
	6	250.		246.28	1	73		
	7	72.21		174.07	3	79		
	10	7.50		166.57				
Cash			50.	216.57	2	83		
	12	50.		166.57	1	85		
	13	9.		157.57	1	87		
	14	2.		155.57	2	91		
	16	71.		84.57				
Cash			100	184.57	1	101		
	17	100.		84.57				
Cash			100	184.57	1	103		
	18	100.		84.57	2	105		
Cash	20		200	284.57	1	108		
	21	5		279.57	2	114		
	23	100.		179.57	3	120		
	26	29.		150.57				
Cash	26		60.	210.57	1	2		
	27	25.		185.57				
C/C			500	685.57			5	
		150.		535.57	1	7		
	28	30.		505.57	2	17		
	30	10.25		495.32	1	22		
	31	12.		483.32				
B P		1.		482.32	1	27		
	Aug 1	35.		447.32				
Cash			700	1,147.32				
Cert		32.58		1,114.74	1	38		
	2	640.		474.74	1	43		
	3	60.		414.74				
Cash			225	639.74				
		75.		564.74	3	61		
	6	175.		389.74				
Cash			250	639.74	1	67		
	7	188.25		451.49	1	72		
	8	179.11		272.38	1	75		
	9	10.35		262.03				
Cash			50	312.03	1	78		
	10	30.		282.03	1	81		
	11	55.		227.03	2	85		
	12	17.20		209.83				
Cash			100	309.83				
		50.		259.83	1	88		
	14	60.		199.83	1	90		
	15	52.36		147.47	1	91		
	16	35.		112.47	4	95		
C/C	20		1,000	1,112.47			1	
		25.12		1,087.35	1	106		
	21	150.		937.35	1	115		
	22	287.16		650.19				

Interest Rate
2% if over 1,000

C. H. CAHAN Jr.

IN ACCOUNT WITH EMPIRE TRUST COMPANY

Memo.	Date	Dr.	Cr.	Balance	Days	Aggregate	Interest Delayed	Net Aggregate
	1917					115	15	
Forward	Aug. 22			650.19	2	129		
	24	285.		365.19	1	133		
	25	10.80		354.39	1	137	15	
					2	8		
	28	46.		308.39				
		10.		298.39	2	14		
T	30	1.		297.39	1	17		
	31	50.		247.39	1	19		
	Sept. 1		500.	747.39	3	40	15	
	4	52.		695.39				
			350.	1,045.39	1	50	4	
	5	15.		1,030.39	1	65		
	6	572.90		457.49	1	69		
	7	50.		407.49	1	69		
	8	294.60		112.89	2	71		
	10	6.		106.89	1	72		
	11	26.		80.89	1	73		
	12	9.69		71.20	7	80		
	19	20.		51.20	1	81		
	20	6.17		45.03		81	19	
	26			45.03				
B/P	27	1.		44.03				
	Oct. 10	.81		43.22				
	26			43.22				
B/P	29	2.		41.22				
Cash	Nov. 10		1,000.	1,041.22	2	20		
	12	25.		1,016.22	1	30		
	13	500.		516.22	1	35		
	14	153.15		360.97	1	39		
	15	293.60		65.47				
Cash			100.	165.47	1	61		
	16	100.		65.47	1	62		
	17	35.		30.47				
	19	1.06		29.41	7	42		
	26	25.		4.41				
B/P	28	1.		7.41				
	30	1.		6.41				
B/P	Dec. 27	2.		4.41				
	1918							
	Mar. 14	1.50		3.31				
	16	.80		2.51				
B/P	29	2.		0.51				
Cash	Apr. 22		1,005.	1,005.51	1	10		
	23	500.		505.51	3	25		
	24	500.		5.51				
	26			5.51				
B/B	30	2.		3.51				
	May 20	200.						
Cash			250.	53.51	1	19		

Subject to regular charges

Interest Rate
2% if over 1,000

C. H. CAHAN JR.

IN ACCOUNT WITH EMPIRE TRUST COMPANY

Memo.	Date	Dr.	Cr.	Balance	Days	Aggregate	Interest Delayed	Net Aggregate
	1918							
Forward	May 20			53.51		12		
			206.	259.51	2	18		
						19		
	22	200.		59.51	1	22		
	23	36.50		23.01				
	30			23.01				
T	31	2.		21.01				
	June 22	15.00		6.01				
	26			6.01				
T	28	2		4.01				
	July 26			4.01				
	Aug. 26			4.01	8			
	Sept. 3		620.	624.01				
	5	18.		606.01				
	6	100.		506.01				
		.50		505.51				
	12	500		5.51				
	26							
	Oct. 10		50.	55.51			1	
	15	50.		5.51		5		
	15		2,400.00	2,405.51			24	
	15			2,405.51	2	48		
	17	2,300.		105.51	1	49		
	18	25.		80.51	6	55		
	24	10.		70.51	1	56		
	25	15.		55.51	1	57	25	
	26			55.51	3	3		
	29	1.		54.51	9	12		
	Nov. 7		60.	114.51	9	21	1	
	16	50.		64.51				
	22	20.		44.51				
	26							
B.P	27	1		43.51				
	Dec. 16	20.		23.51				
	26			23.51				
	1919							
	Jan. 13	20.		3.51				
	26							

2% if over 1,000

EMPIRE TRUST COMPANY, N. Y.

Name—C. H. CAHAN Jr.

Address—P. O. Box 555, Montreal, Canada.

Date	Checks	Date	Deposits	Int. Delay	Previous Balance	Aggregate	Date	Balance
							May 3	2.51
Jun 4	1,000.00	Jun 3	1,110.00		2.51		Jun 3	1,112.51
Jun 5	100.00				1,112.51	1.10	Jun 4	112.51
Jun 27	100.00	Jun 21	150.00	30	112.51	1.20	Jun 5	62.51
Jul 2	50.00				12.51		Jun 21	162.51
Jul 7	36.50	Jun 28	150.00	30	162.51	20	Jun 27	62.51
Jul 8	20.00				62.51		Jun 28	182.51
Jul 9	20.00				182.51	1.00	Jul 2	82.51
Aug 4	36.41				82.51	1.50	Jul 7	67.01
Aug 6					67.01	1.60	Jul 8	46.41
					46.41		Jul 9	26.41
					26.41		Aug 4	0

Plaintiff's Exhibit 12.

643

C. H. CAHAN JUNIOR
120 Broadway—G. P. O. Box 1848
New York City.

June 16th, 1916.

Empire Trust Company,
120 Broadway,
New York City.

Dear Sirs:

I am enclosing herewith a note of Mr. Edward L. Doucette, of the Hamilton Apartment, 114th Street & Riverside Drive, New York City, for $1092.50, which is due and payable on June 20th at the Liberty National Bank with interest at the rate of 6% per annum. 644

Will you please put this through for collection, and if same is not paid, have the same protested.

Yours very truly,

CHC Jr/AR (Signed) C. H. CAHAN, Jr.
Enc-1

Plaintiff's Exhibit 13.

August 3, 1916.

Mr. C. H. Cahan, Jr.,
c/o Canadian Car & Foundry Company,
120 Broadway,
New York City. 645

Dear Sir:

We are enclosing herewith your cancelled voucher dated July 5th, for Fifty Dollars, which, although charged against your account for the month of July, was not included with the cancelled vouchers returned you for that month.

Apologizing for our oversight, we are—

Very truly yours,

Assistant Secretary.

646 **Plaintiff's Exhibit 14.**

C. H. CAHAN Junior
120 Broadway G. P. O. Box 1848
New York City

August 21, 1916.

The Empire Trust Company,
120 Broadway,
New York City.

Dear Sirs:

647 I am enclosing herewith a promissory note of Edward L. Doucette, of Hamilton Apartments, 114th Street & Riverside Drive, dated March 20th, 1916, and payable five months from said date at the Liberty National Bank of New York, for $1092.50 plus interest at 6%, in favor of John B. Newman and endorsed by John B. Newman to me.

Will you please have this duly presented for payment, and if payment on the same is refused have it protested, charging your costs in this matter to my account.

Yours very truly,

CHC Jr/AR (Signed) C. H. CAHAN, Jr.
Enc-1

648

Plaintiff's Exhibit 15. 649

C. H. CAHAN JUNIOR
165 Broadway G. P. O. Box 1848
New York City

Aug. 21st, 1917.

Empire Trust Company,
120 Broadway,
New York City.

Dear Sirs:

Please change my address in your books to P. O. Box 555, Montreal, Canada. 650

Yours very truly,

(Sgd) C. H. CAHAN JR.

August 22, 1917.

Mr. C. H. Cahan, Jr.,
P. O. Box 555,
Montreal, Canada.

Dear Sir:

We note from your letter of August 21st that your address has been changed to the above, and shall be guided accordingly. 651

Very truly yours,

Assistant Secretary.

652 **Plaintiff's Exhibit 16.**

Telephone: Main 1250-1251
Offices: 10th Floor Transportation Building

Cables: "Junior," Montreal
Codes: Liebers, Western Union

C. H. CAHAN, JUNIOR, LL.B.
Barrister, Solicitor & Advocate

Member of the Bars of Quebec, Nova Scotia & British Columbia

P. O. Box 555,
Montreal, Canada

August 31st, 1917.

Messrs. Empire Trust Company,
120 Broadway,
New York City, N. Y.

Dear Sirs:

653 Please place enclosed cheque for $500.00 to credit of my account.

Yours very truly,

(Signed) C. H. CAHAN, Jr.

Plaintiff's Exhibit 17.

Telephone: Main 1250-1251
Offices: 10th Floor Transportation Building

Cables: "Junior," Montreal
Codes: Liebers, Western Union

C. H. CAHAN, JUNIOR, LL.B.
Barrister, Solicitor & Advocate

Member of the Bars of Quebec, Nova Scotia & British Columbia

P. O. Box 555,
Montreal, Canada

September 1st, 1917.

654

Messrs. Empire Trust Company,
120 Broadway,
New York, N. Y.

Dear Sirs:

Please deposit the enclosed cheque to credit of my account and oblige,

Yours very truly,

(Signed) C. H. CAHAN, Jr.

Plaintiff's Exhibit 18. 655

Telephone: Main 1250-1251
Offices: 10th Floor Transportation Building

C. H. CAHAN, JUNIOR, LL.B.
Barrister, Solicitor & Advocate

Member of the Bars of Quebec, Nova Scotia & British Columbia

Cables: "Junior," Montreal
Codes: Liebers, Western Union

P. O. Box 555,
Montreal, Canada

Sept. 5th–1917.

The Empire Trust Company,
120 Broadway,
New York City.

Dear Sirs,— 656

Although I wrote you some weeks ago asking you to change my address on your books from General Post Office Box 1848 New York City, to Post Office Box 555 Montreal, yet you sent my cancelled cheques for the month of August to my former address.

Will you please see that my change of address is properly noted.

Yours very truly,

(Sgd) C. H. CAHAN JR.

657

658 *Plaintiff's Exhibits.*

Sept. 6, 1917.

Mr. C. H. Cahan, Jr.,
P. O. Box 555,
Montreal, Canada.

Dear Sir:

In reply to your letter of September 5th, we desire to advise you that due to an oversight your address was not changed on your statement sheet, and your canceled vouchers were sent to your old address.

Proper notation, however, has now been made on
659 our records, and we trust you will have no further cause for complaint.

Apologizing for any annoyance our error may cause you, we are,

Very truly yours,

Assistant Secretary.

Plaintiff's Exhibit 19.

June 25, 1919.

C. H. Cahan, Jr., Esq.,
P. O. Box 555,
Montreal, Canada.

660 Dear Sir:

We regret to have to advise you that your account with us is not meeting our requirements in the matter of average balances maintained, and we would, therefore, thank you to have it transferred elsewhere by the 10th of July.

Yours very truly,

P. H. H.

T. Assistant Secretary.

Plaintiff's Exhibit 20.

661

July 11, 1919.

C. H. Cahan, Jr., Esq.,
P. O. Box 555,
Montreal, Canada.

Dear Sir:

Referring to our recent letter requesting you to transfer your account, it will not be agreeable to us to accept any further deposits. We presume that you will close out the present balance, after determining the amount of outstanding checks.

Yours very truly,

662

T

P. H. H.
Assistant Secretary.

Plaintiff's Exhibit 21.

August 4, 1919.

C. H. Cahan, Jr., Esq.,
P. O. Box 555,
Montreal, Canada.

Dear Sir:

We are enclosing our draft to your order for $26.41, in payment of the amount to your credit in accordance with our recent letter requesting that the account be closed. 663

Yours very truly,

T.
Encl.

P. H. H.
Assistant Secretary.

664 **Plaintiff's Exhibit 22.**

Coleman Du Pont, Chairman of the Board
Le Roy Baldwin, President
Francis Henderson, Vice President
Myron J. Brown, Secretary
Paul H. Hudson, Asst. Secretary
Henry P. Talmadge, Vice President
W. B. Baldwin, Treasurer
Eugene Miller, Asst. Secretary
William J. Hance, Asst. Secretary

William H. English, Vice President
Fred'k L. Eldridge, Vice President
Edward C. Wilson, Asst. Treasurer
Edward A. Lyon, Asst. Secretary
Henry F. Whitney, Asst. Trust Officer

665 **EMPIRE TRUST COMPANY**
Main Office
120 BROADWAY

Fifth Avenue Office
580 Fifth Avenue

Cable Address
Empire, New York
Londomured, London
Lieber's Code
W. U. Code

W. H. Parker
London Secretary
41 Threadneedle Street
London, E. C.

In replying, refer to EM

NEW YORK, Aug. 5, 1920.

Mr. C. H. Cahan, K.C.
Transportation Building,
St. James Street,
Montreal, Canada.

Dear Mr. Cahan:

666 We beg to acknowledge receipt of the formal demand contained in your letter of July 22, 1920, and relating to the account of Mr. C. H. Cahan, Jr. with us.

Very truly yours,

(Sgd) EUGENE MILLER
Assistant Secretary.

G

Address All Communications to the Company

Defendant's Exhibit A. 667

B—4-200M

Please Omit All Dollar Marks.

DEPOSITED IN
EMPIRE TRUST COMPANY
Main Office:
120 BROADWAY

New York, Oct 15 1918

For Account of C. H. Cahan, Jr.

		Dollars	Cents	
Currency				
Checks	c/c 107 W	2400	00	668

(Stamp)

Oct 15 1918
3

Defendant's Exhibit A-1.

(Deposit Slip of Empire Trust Company.)

New York, 9/4/17

For Account of C. H. Cahan, Jr.

		Dollars	Cents	
Currency				669
Checks				
(8)		350	—	
	(4)			

(Stamp)

(Received Stamp)
Sep 4 1917
(rest illegible)

670 **Defendant's Exhibit A-2.**

(Deposit Slip of Empire Trust Company.)

New York, Sep 1–1917

For Account of C. H. Cahan, Jr.

	Dollars	Cents
Check of C. H. Cahan on Bk of Montreal N. Y. City	500	
Currency		
Checks		
(1.5)		

(*Stamp*)

671 Sep 1 1917 4

(and Empire Trust received stamp—partly illegible)

Defendant's Exhibit A-3.

(Deposit Slip of Empire Trust Company.)

New York, Aug 20 1917

For Account of C. H. Cahan, Jr.

	Dollars	Cents
Currency		
672 Checks c/c 107	1000	00
(1)		

(*Stamp*)

Aug 20 1917

4

Defendant's Exhibit A-4. 673

(Deposit Slip of Empire Trust Company.)

New York, July 27, 1917.

For Account of C. H. Cahan, Jr.

	Dollars	Cents
Currency		
Checks c/c 107 (5)	500.	

(*Stamp*)
Jul 27 1917
3

674

Defendant's Exhibit A-5.

(Deposit Slip of Empire Trust Company.)

New York, 5/29/17

For Account of C. H. Cahan, Jr.

	Dollars	Cents
Currency		
Checks Crtfd. c/c 107	500	—

675

(*Stamp*)
May 29 1917
2

676 **Defendant's Exhibit A-6.**

(Deposit Slip of Empire Trust Company.)

New York, May 26/17

For Account of C. H. Cahan, Jr.

	Dollars	Cents
Currency		
Checks c/c 107	750	00

(*Stamp*)

Mar 26 1917
2

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677 **Defendant's Exhibit A-7.**

(Deposit Slip of Empire Trust Company.)

New York, 4/12/17

For Account of C. H. Cahan, Jr.

	Dollars	Cents
Currency		
Checks C. C. 107	500	—

(*Stamp*)

Apr 12 1917
3

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678 **Defendant's Exhibit A-8.**

(Deposit Slip of Empire Trust Company.)

New York, Mr 22/17

For Account of C. H. Cahan, Jr.

	Dollars	Cents
Currency		
Checks C. C. 107	500	00

(*Stamp*)

Mar 22 1917
4

Defendant's Exhibit A-9. 679

(Deposit Slip of Empire Trust Company.)

New York, Jan 13 1917

For Account of C. H. Cahan, Jr.

	Dollars Cents
Currency	
Checks	4000 00
own check Cert on 107	

(*Stamp*)

Jan 13 1917
2 g

680

Defendant's Exhibit A-10.

(Deposit Slip of Empire Trust Company.)

New York, Jan 3 1917

For Account of C. H. Cahan, Jr.

	Dollars Cents
Currency	
Checks C. C. 107	3000 00

(*Stamp*)

681

Jan 3 1917
4

682 **Defendant's Exhibit A-11.**

(Deposit Slip of Empire Trust Company.)

New York, Jan 2 1917

For Account of C. H. Cahan, Jr.

	Dollars	Cents
Currency	1000	00
Checks C. C. (8)		

(Stamp)
Jan 1 1917
1

683

Defendant's Exhibit A-12.

(Deposit Slip of Empire Trust Company.)

New York, Nov 29 1916

For Account of C. H. Cahan, Jr.

	Dollars	Cents
Currency		
Checks C. C. (8)	1000	

(Stamp)
684 Nov 29 1916
4

Defendant's Exhibit A-13. 685

(Deposit Slip of Empire Trust Company.)

New York, Nov 20 1916

For Account of C. H. Cahan, Jr.

	Dollars	Cents
Currency		
Checks C. C. (8)	1000	00

(*Stamp*)

Nov 20 1916
2

686

Defendant's Exhibit A-14.

(Deposit Slip of Empire Trust Company.)

New York, Nov 1 1916

For Account of C. H. Cahan, Jr.

	Dollars	Cents
Currency	50	00
Checks Certified Agents Bank of Montreal	1000	00
	1050	00

687

CC (written over "Certified")

(*Stamp*)

Nov 1 1916
2

688 **Defendant's Exhibit A-15.**

(Deposit Slip of Empire Trust Company.)

New York, Oct 13 1916

For Account of C. H. Cahan, Jr.

	Dollars	Cents
Currency		
Checks (8) C. Cert.	670	00

(*Stamp*)

Oct 13 1916
6

689

Defendant's Exhibit A-16.

(Deposit Slip of Empire Trust Company.)

New York, Sep 30 1916

For Account of C. H. Cahan, Jr.

	Dollars	Cents
Currency		
Checks (8) Certified	1000	00

(*Stamp*)

690 Sep 30 1916
2

Defendant's Exhibit A-17. 691

(Deposit Slip of Empire Trust Company.)

New York, Sep 20 1916

For Account of C. H. Cahan, Jr.

	Dollars	Cents
Currency (8)	3500	00
Checks Certified		

(*Stamp*)

Sep 20 1916
7

692

Defendant's Exhibit A-18.

(Deposit Slip of Empire Trust Company.)

New York, Sep 1 1916

For Account of C. H. Cahan, Jr.

	Dollars	Cents
Currency		
Checks (Certified) (8)	2000	00
Certified		

(*Stamp*) 693

Sep 1 1916
2

694 **Defendant's Exhibit A-19.**

(Deposit Slip of Empire Trust Company.)

New York, Aug 2/16

For Account of C. H. Cahan, Jr.

	Dollars	Cents
Currency (8)	5000	00
Checks		
Accepted		

O. K.
E. A. L.

695 (*Stamp*)
Aug 2 1916
6

Defendant's Exhibit A-20.

(Deposit Slip of Empire Trust Company.)

New York, Jul 12 1916

For Account of C. H. Cahan, Jr.

	Dollars	Cents
Currency		
696 Checks Certified (8)	1000	00

C.C

(*Stamp*)
Jul 12 2

Defendant's Exhibit C.

697

DEBITS A to E	8/2/16	SHEET 4	
Elkus Gleason & P	1,167.50	1,167.50 d	
C. B. Ellis	60.00		
	3.59	63.59 d	
Empire Kaolin	10.00		
	5.00		
	5.00		
	100.00		
	10.00	130.00 d	
" Safed Ep	8.33		
	8.33	16.66 d	
W E Nhaus	25.00		
	32.50		698
	3.00	60.50 d	
Equitable O/B Corp	200.00		
	833.33	1,033.33 d	
G Ternest	93.59		
	93.59	187.18 d	
Ernet & Cane	114.72	114.73 d	
W M Evarts	2.00	2.00 d	
N Erb	6.78		
	800.00		
	137.65		
	173.37		
	74.50		
	48.00		
	20.25		699
	23.00		
	30.00		
	96.50		
	50.00		
	112.00		
	98.43		
	80.21	1,750.69 d	
		93,080.01 c	
	93,080.01	93,080.01 d	

700 *Defendant's Exhibits.*

	P Abbot	10.00	
		15.17	25.17 d
	J W Adler	75.00	
		200.00	275.00 d
	Alaska Mines Co	200.00	200.00 d
	Am R Fidelity Co	2.00	
		10.00	12.00 d
	Ame Malting Co	5.00	
		200.00	
		16.52	
		13.50	
		6.50	
		24.00	
701		1.00	
		5.00	
		5.00	
		6.50	
		7.50	
		3,641.50	
		2,380.00	6,312.02 d
	Anness & Newman	63.12	
		50.00	
		281.25	
		1,500.00	
		1,710.00	
		1,500.00	5,104.37 d
	M Arnois	10.00	10.00 d
702	E Bacharch	25.00	25.00 d
	L D & A J Baldwin	374.58	374.58 d
	C Baring	100.00	100.00 d
	A B Be Nech	981.50	
		1,518.50	2,500.00 d
	Biograph Co	9.00	
		9.00	
		5.35	
		5,000.00	5,023.35 d

Defendant's Exhibits. 703

Bishops Ser Co	335.00	335.00 d
L Block	1.76	1.76 d
J A Balancard	890.21	890.21 d
W S Blitz	10.00	10.00 d
E S Booth	10.00	10.00 d
M E Buffington	1,035.50	
	440.00	1,475.50 d
E J Bullwinkel	289.50	289.50 d
H A Caesar C	1,800.00	1,800.00 d
C H Cahan	2,500.00	2,500.00 d
Est J J Canon	50.00	50.00 d
Carmond Kellog & G	175.00	175.00 d
Central News Ser	15.00	15.00 d
B P Cheny	550.00	704
	37.22	587.22 d
S A Clark	15.00	15.00 d
M Cohan	10.00	10.00 d
R R Conklin	3,000.00	
	300.00	3,300.00 d
Costa Rica Mines	680.55	680.55 d
A F Cowen Spl	34.63	34.63 d
C S Crossman Co	100.00	100.00 d

705

706 **Defendant's Exhibit D.**

CREDITS A to E 8/2/16 SHEET 1

	Alsa Gold Fields Co	55,610.43
	J D Aldridge	1,350.00
	T H Allen	170.00
	J P Allen Co	47.00
	Ame Malying Co	167.99
		6,177.09
	Amer Ore Rec Co	1,068.21
	Amer Process Co	51.00
	Amer Tar & Waz	1,862.68
	Anness & Newman	2,605.25
	J T Angon	500.00
707	B Arnonsn	15.00
	Artillery Fuse Co	12,510.00
	Est A K Hmaschemoore	291.15
	Avery & Whiting	10.00
	Babcock Wilzox C9	10.50
	L W Baldwin	50,000.00
	Est D M Ballon	70.00
	D Bandler	94.00
	W A Barber	1,210.67
	C Baring	130.25
	Barron Trust Co	2.00
	M M Beck Spl	395.00
	J E Bell	250.00
	S T Bell	112.50
708	Bekl Bag Co Inc	754.38
	A B Bennech	1,518.50
		700.00
	C K Benjamin	65.90
		167.22
		11.00
	J D Brekowitz	500.00
	E Berlimer	16.00
	M Bernhart	220.00
	Eme Bernheimer	550.00

G W Betts	1,000.00	
Biograph Co	1,828.71	
	3,216.56	
Est H Bishop	647.50	
Bishops Ser Col	287.20	
C M Blakley Agt	62.38	
A E Blackwood	368.00	
Est J A Blachard	890.21	
W S Blitz	150.00	
	28.00	
Wm Block	60.00	
Boro Co	197.26	
J C Brady	9.00	
T E Brown	825.00	710
F A Bryant	1,000.00	
L Bue	1,020.00	
M E Buffington	430.00	
E A Burke	100.00	
W A Burke	125.00	
W F Burne Ex Corp	250.00	
H A Caesar O	55,029.57	
C H Cahan	5,000.00	
W Campbell	121.90	
Canadan Gold Car	727.71	
C Carrington	1,776.57	
Est J D Carrol	2,000.00	
J B Carter	1,610.39	
L Cerf	21.44	711
H R Chambergs C	482.50	
B P Cheny	1,500.00	
Childs Co	250.00	
R D Chipp	1,250.00	
Church S Warren Co	45.00	
G A Calrk	578.16	
R F "	2,522.03	
C A Close Spl	84.40	
Comp Sec Dep	5,741.68	

712 *Defendant's Exhibits.*

D W Comsrock	210.33
R R Conklin	50.00
I B Conover	25.76
Con Colar & Co	3,321.61
Cooper Hewott Elect	626.92
A Cordes	100.00
R B Cowing	925.78
Crane & Bullwinkel	289.50
W C Crosby	30.00
Crossman Xo	56.94
C S Crossman Xo	150.00
H Crowe	60.83
R J Calhone	20.80
H K Curtis	83.79
Est T F Cushing	157.50
	970.25
Easters Sec Ser	264.00
F R Eaton	78.75
M V P	25.00
A I Elkus	40.00
Elkus Gleason & P	9,056.31
C E Ellis	10.00
E R Erly	155.00
Empire Safe Dep Co	27.50
Equitable C	

713

714

Defendant's Exhibit E. 715

December 20, 1915.

Mr. C. H. Cahan,
120 Broadway,
New York City.

Dear Sir:

Can you not arrange to maintain with us an average daily free balance of at least $500.00? We make this request owing to the fact that when a client's balance falls below $500.00, the account shows us a loss, instead of a profit.

It is customary for us to reimburse ourselves for losses incurred in this manner, by making a nominal monthly charge as follows: 716

$1.00 a month when balances average between $100.00 and $500.00.

$2.00 a month when balances fall below $100.00.

We hope you will find it convenient to comply with our request to keep your balances up to the required mark, but if they should fall below, shall have to charge your account as above stated, this effective as of January 1916.

Very truly yours,

717

Assistant Secretary.

718 **Statement as to Evidence.**

The foregoing constitutes the testimony and a statement of all the evidence offered upon the trial of this case, and the defendant, Empire Trust Company, and the plaintiff, Charles Hazlitt Cahan, present the foregoing as their bills of exceptions respectively in this case and pray that the same may be settled and allowed and signed and certified by the judge as provided by law.

PARMLY, STETSON & WOODWARD,
Attorneys for Plaintiff-in-Error
and Defendant-in-Error
(Defendant below).

719

HUGHES, ROUNDS, SCHURMAN & DWIGHT,
Attorneys for Defendant-in-Error
and Plaintiff-in-Error
(Plaintiff below).

Stipulation Settling Bills of Exceptions.

IT IS HEREBY STIPULATED that the foregoing are true and correct bills of exceptions and that an order may be entered settling and filing the same as such.

720 Dated, New York, June , 1925.

PARMLY, STETSON & WOODWARD,
Attorneys for Plaintiff-in-Error
and Defendant-in-Error.

HUGHES, ROUNDS, SCHURMAN & DWIGHT,
Attorneys for Defendant-in-Error
and Plaintiff-in-Error.

Order Settling Bills of Exceptions. 721

Upon the foregoing stipulation, the bills of exceptions herein are settled and ordered on file.

Dated, New York, June , 1925.

FRANCIS A. WINSLOW,
U. S. District Judge.

Opinion.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK. 722

CHARLES HAZLITT CAHAN,
Plaintiff,

vs.

EMPIRE TRUST COMPANY,
Defendant.

APPEARANCES:

ROUNDS, SCHURMAN & DWIGHT, Attorneys for Plaintiff (CHARLES E. HUGHES, JR., and THOMAS L. ENNIS, of Counsel); 723

PARMLY, STETSON & WOODWARD, Attorneys for Defendant (VAN VECHTEN VEEDER, WILLIAM P. ALLEN, WILLIAM L. WOODWARD, of Counsel).

WINSLOW, D. J.:

This action is brought to recover the proceeds of twenty-one checks aggregating $31,170, drawn

on funds of the plaintiff by C. H. Cahan, Jr., and deposited by him with defendant, to Cahan, Jr's. personal account. The checks were drawn during the years 1916, 1917 and 1918, under powers of attorney executed by plaintiff to Cahan, Jr. The drawee banks were the Bank of Montreal (New York) and The Guaranty Trust Company. The proceeds of the checks thus deposited with the defendant were used by Cahan, Jr., for his personal use and benefit, and not for the benefit or account of the plaintiff.

The case has been tried by the Court, and a jury of one, pursuant to stipulation duly entered on
125 the minutes.

Both sides have moved for the direction of a verdict.

The Bank of Montreal and The Guaranty Trust Company, the drawee banks, had no notice that the agent of plaintiff (Cahan, Jr.) intended to misuse the funds withdrawn by the several checks. The form of the checks was such that they might have been properly authorized orders. On the other hand, the defendant herein was charged with the knowledge that the agent was using the checks and their proceeds for his personal use and benefit.

The agent did not in fact have actual authority either to draw these particular checks or to de-
126 posit them to his personal credit with defendant.

Three of the checks involved were drawn to defendant's order. As to these checks defendant was charged with notice, that whatever authority he had to draw them, he was now actually using them for his personal benefit.

Newton v. *Hanson*, 229 Fed. 256.

The form of the checks drawn to the agent's own order imported the ownership of the moneys in the maker—i. e., the plaintiff herein.

Whether the checks were drawn to pay the agent's indebtedness to the defendant (which would seem to be the case in three instances referred to) or whether they were drawn for the purpose of transferring the principal's funds to the agent's personal account—which actually resulted—the defendant is liable whether the theory of the action be for conversion or for money had and received.

Wagner Trading Co. v. *Battery Park Natl. Bank*, 228 N. Y. 37.

Even if the actual good faith of the defendant be not questioned, the form of the checks should have led the defendant to inquire, in which event the real facts would have come to light. Failure to make this inquiry amounts to "bad faith," in a commercial sense. 728

Rochester & C. T. R. Co. v. *Pariour*, 164 N. Y. 281, 284.

Sec. 93, N. Y. Negotiable Instruments Law.

The language of the power of attorney herein cannot be construed as giving authority to the agent to use the principal's funds for Cahan, Jr.'s personal use and benefit. The record certainly does not sustain the contention that the defendant was a holder in "due course." Cahan, Jr., unlike a trustee, had no title, and by deposit with defendant, he could not transfer title to defendant. 729

Sec. 91 and Sec. 98, Negotiable Instruments Law.

I am not unmindful of the reasoning of the New York Court of Appeals in *Havana Central R. R.*

Co. v. *Knickerbocker Trust Co.*, 198 N. Y. 423—but I am constrained rather to follow the reasoning of *Havana Central R. R. Co.* v. *Central Trust Co.*, 204 Fed. 546.

The defendant in the case at bar was put on inquiry to inquire not only as to Cahan, Jr.'s authority to draw these particular checks, but also his authority to draw them and use them for his own purposes. In the *Havana Central R. R.* case (204 Fed. 546, at p. 551), the Court said:

> "But if the Bank have knowledge that the officer is using the check for his personal bene-
731 fit, e. g., to pay his debt to the bank or to deposit it to his personal credit, then the bank is put upon inquiry, and if it fail to make it, it pays at its peril."

While the comment of the Circuit Court of Appeals in *Havana Central R. R. Co.* v *Central Trust Co.* (*supra*) disapproving of and departing from the opinion of the Court of Appeals (198 N. Y. 423) is *dictum*, it involved fundamentals necessarily declared and adhered to by the Circuit Court in arriving at its conclusion in the case then under consideration.

Verdict directed for plaintiff for $31,170.

732 December 22, 1924.

FRANCIS A. WINSLOW,
U. S. District Judge.

Petition of Empire Trust Company for Writ of Error. 733

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

CHARLES HAZLITT CAHAN,
Plaintiff,

against

EMPIRE TRUST COMPANY,
Defendant. 734

To the Honorable
Judge of the United States District Court for the Southern District of New York.

And now comes Empire Trust Company, the defendant in the above entitled action, by Messrs. Parmly, Stetson & Woodward, its attorneys, and feeling itself aggrieved by the final judgment of this Court entered against it and in favor of the plaintiff on the 12th day of January, 1925, defendant hereby prays that a Writ of Error may be allowed to it from the United States Circuit Court of Appeals for the Second Circuit to the District Court of the United States for the Southern District of New York, and in connection with this petition the petitioner herewith presents his assignment of error. 735

Petitioner further prays that an order of supersedeas may be entered herein pending the final disposition of the case and that the amount of the security may be fixed by the order allowing the Writ of Error and that upon the giving of such security, all further proceedings in this Court be

suspended and stayed until the determination of said Writ of Error by the United States Circuit Court of Appeals for the Second Circuit, and your petitioner will ever pray.

PARMLY, STETSON & WOODWARD,
Attorneys for Defendant,
Office & P. O. Address,
#2 Rector Street,
Borough of Manhattan,
New York City.

737

Order Allowing Writ of Error on Behalf of Empire Trust Company.

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

CHARLES HAZLITT CAHAN,
Plaintiff,

against

EMPIRE TRUST COMPANY,
738 Defendant.

Let a Writ of Error issue from the United States Circuit Court of Appeals for the Second Circuit to the United States District Court for the Southern District of New York, as prayed for in the petition of the said defendant, and a citation be issued to the said plaintiff.

And it now appearing that a citation has been issued in the cause, it is now ordered that the Writ of Error allowed as above stated, operate as

a supersedeas, and that the defendant furnish a bond in the sum of Thirty-two thousand Dollars, conditioned according to law to be approved by this Court and that upon the filing of the supersedeas given in said amount with good and sufficient surety or sureties so approved, execution upon said judgment to be stayed.

Dated, February 2nd, 1925.

AUGUSTUS N. HAND,
United States District Judge.

A. G. Jr.

740

Assignment of Errors on Behalf of Empire Trust Company.

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

CHARLES HAZLITT CAHAN,
Plaintiff,

against

EMPIRE TRUST COMPANY,
Defendant.

741

And now comes the plaintiff-in-error by Messrs. Parmly, Stetson & Woodward, its attorneys, and in connection with its petition for a Writ of Error, says that in the record of proceedings and in the final judgment aforesaid, manifest error has inter-

742 *Assignment of Errors.*

vened to the prejudice of the plaintiff in error (defendant below), to wit:

I. The Court erred in directing a verdict for the plaintiff.

II. The Court erred in directing a verdict for the plaintiff in the sum of Thirty-one Thousand One Hundred Seventy ($31,170) Dollars.

III. The Court erred in not directing a verdict for the defendant.

743 IV. The verdict and judgment are contrary to law.

By reason whereof, plaintiff-in-error prays that the aforesaid may be reversed, etc.

PARMLY, STETSON & WOODWARD,
Attorneys for Plaintiff-in-Error,
(Defendant Below),
No. 2 Rector Street,
Borough of Manhattan,
City of New York.

744

Bond on Writ of Error of Empire Trust Company.

745

DISTRICT COURT OF THE UNITED STATES OF AMERICA

FOR THE SOUTHERN DISTRICT OF NEW YORK
IN THE SECOND CIRCUIT.

CHARLES HAZLITT CAHAN,
Plaintiff-Respondent,

against

EMPIRE TRUST COMPANY,
Defendant-Appellant.

746

KNOW ALL MEN BY THESE PRESENTS, That Empire Trust Company, as principal, and National Surety Company, a corporation under the laws of the State of New York, with its principal place of business at No. 115 Broadway, in the City, County and State of New York, as surety, are held and firmly bound unto the above named Charles Hazlitt Cahan in the sum of Thirty Two Thousand ($32,000.00) Dollars to be paid to the said Charles Hazlitt Cahan for the payment of which well and truly to be made, said principal and surety bind themselves, their heirs, executors, administrators and assigns, jointly and severally, firmly by these presents, sealed and dated the 18th day of February, 1925.

747

WHEREAS, the above named Empire Trust Company has prosecuted an appeal to the United States Circuit Court of Appeals for the Second Circuit, to reverse the Judgment rendered in the above entitled suit, by a Judge of the District Court of the United States for the Southern District of New York.

748 *Bond of Empire Trust Co. on Writ of Error.*

NOW, THEREFORE, the conditions of this obligation is such, that if the above named Empire Trust Company shall prosecute said appeal to effect, and answer all damages and cost if it fail to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

EMPIRE TRUST COMPANY,
P. H. HUDSON
(Seal) Vice-President.

NATIONAL SURETY COMPANY,
By S. B. HOUGH
749 (Seal) Resident Vice-President.

Attest:
M. C. MCGRATH
Resident Assistant Secretary.

AFFIDAVIT, ACKNOWLEDGMENT, AND JUSTIFICATION BY GUARANTEE OF SURETY COMPANY.

STATE OF NEW YORK, } ss.:
COUNTY OF NEW YORK, }

On this 18th day of February, 1925, before me personally came S. B. Hough, known to me to be
750 the Res. Vice-President of National Surety Company, the corporation described in and which executed the foregoing bond of Empire Trust Company as surety and who, being by me duly sworn, did depose and say that he resides in the City of New York, State of New York; that he is the Res. Vice-President of said Company, and knows the corporate seal thereof; that the said National Surety Company is duly incorporated under the laws of the State of New York, that said Company has com-

plied with the provisions of the Act of Congress of August 13, 1894, that the seal affixed to the within Bond of Empire Trust Company is the corporate seal of said National Surety Company, and was thereto affixed by authority of the Board of Directors of said Company, and that he signed his name thereto by like authority as Res. Vice-President of said Company, and that he is acquainted with M. C. McGrath and knows him to be the Res. Assistant Secretary of said Company; and that the signature of said M. C. McGrath subscribed to said Bond is in the genuine handwriting of said M. C. McGrath, and was thereto subscribed by order and authority 752
of said Board of Directors, and in the presence of said deponent; and that the assets of said Company, unencumbered and liable to execution exceed its debts and liabilities of every nature whatsoever, by more than the sum of Ten Million dollars.

S. B. HOUGH.
(Deponent's Signature.)

Signed; sworn to, and acknowledged before me this 18th day of February, 1925.

M. O'DONNELL,
Notary Public, &c.

753

H. E. EMMETT,
Notary Public for King County No. 29.
Certificate filed in New York County No. 64, Suffolk, Nassau, Bronx No. 9, Queens No. 264, Richmond & Westchester County.
Kings County Register's Office No. 6927.
New York County Register's Office No. 6981.
Bronx County Register's Office No. 2618.
Commission expires March 30, 1926.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

On this 20th day of February, 1925, before me personally came P. H. Hudson, to me known, who, being by me duly sworn, did depose and say that he resides in Upper Montclair, N. J.; that he is the Vice-President of the Empire Trust Company, the corporation described in and which executed the foregoing instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was
755 so affixed by order of the Board of Directors of the said corporation, and that he signed his name to the said instrument by like order.

P. J. DEVLIN,
(Seal) Notary Public,
Bronx Co. 53, Reg. No. 199.
N. Y. Co. Clerk's No. 447, Reg. No. 5329.
Kings Co. Clerk's No. 46, Reg. No. 5181.
Certificate filed Westchester Co.
Commission Expires March 30, 1926.

756

L. 22-266

DISTRICT COURT OF UNITED STATES

SOUTHERN DISTRICT OF NEW YORK

CHARLES HAZLITT CAHAN,
Plaintiff-Respondent,

against

EMPIRE TRUST COMPANY,
Defendant-Appellant. 758

BOND ON APPEAL

Filed Feb. 20, 1925.

SURETY
NATIONAL SURETY COMPANY

PARMLY, STETSON & WOODWARD,
Attorneys for Def. Ap.

759

I approve of the written bond, and of the sufficiency of the surety thereon,

J. W. M.,
C. J.

2/20/25

A. G. Jr.

760 **Citation on Behalf of Empire Trust Company.**

By the Honorable HENRY W. GODDARD, *one of the United States District Judges for the Southern District of New York, in the Second Circuit, to* CHARLES HAZLITT CAHAN, GREETING:

YOU ARE HEREBY CITED and admonished to be and appear before a United States Circuit Court of Appeals for the Second Circuit, to be holden at the Borough of Manhattan in the City of New York, in the District and Circuit above named, on the 3rd day of March, 1925, pursuant to a Writ of Error filed in the Clerk's Office of the District
761 Court of the United States for the Southern District of New York, wherein Empire Trust Company is plaintiff-in-error (defendant below) and you are defendant-in-error (plaintiff below), to show cause, if any there be, why the judgment as in said Writ of Error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

GIVEN UNDER MY HAND at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 7th day of February, in the year of our Lord One Thousand Nine Hundred and Twenty-five, and of the Independence of the
762 United States the One Hundred and Forty-ninth.

HENRY W. GODDARD,
United States District Judge for the Southern District of New York, in the Second Circuit.

A. G. Jr.

Petition of Charles Hazlitt Cahan for Writ of Error.

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

CHARLES HAZLITT CAHAN,
Plaintiff,

against

EMPIRE TRUST COMPANY,
Defendant.

To the Honorable Judge of the United States District Court for the Southern District of New York:

And now comes Charles Hazlitt Cahan, the plaintiff in the above-entitled action, by Messrs. Reynolds, Schurman & Dwight, his attorneys, and feeling himself aggrieved by the final judgment of this Court entered on the 12th day of January, 1925, against Empire Trust Company and in favor of the said Charles Hazlitt Cahan, in so far as the said judgment denied to the said Charles Hazlitt Cahan interest on the amounts of the checks as demanded in the complaint, hereby prays that a writ of error may be allowed to him from the United States Circuit Court of Appeals for the Second Circuit to the District Court of the United States for the Southern District of New York, and in connection with this petition petitioner hereby presents his assignment of errors.

Petitioner further prays that an order may be entered herein allowing the said writ of error and that the amount of the security to be given by plaintiff may be fixed by the said order.

Dated, New York, March 11, 1925.

HOTCHKISS, SCHURMAN & DWIGHT,
Attorneys for Plaintiff,
Office and P. O. Address:
100 Broadway,
Borough of Manhattan,
City of New York.

257

Order Allowing Writ of Error on Behalf of Charles Hazlitt Cahan.

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

CHARLES HAZLITT CAHAN,
Plaintiff,

against

EQUITABLE TRUST COMPANY,
Defendant.

258

Let a writ of error issue from the United States Circuit Court of Appeals for the Second Circuit to the United States District Court for the Southern District of New York, as prayed for in the petition of the said plaintiff, and a citation be issued to the said defendant

And it now appearing that a citation has been issued in the cause, it is now ordered that the plaintiff furnish a bond in the sum of Two hundred and fifty Dollars ($250) conditioned according to law to be approved by this Court.

Dated, New York, March 11, 1925.

JNO. C. KNOX,
U. S. District Judge.

A. G., Jr.

770

Assignment of Errors on Behalf of Charles Haslitt Cahan.

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

CHARLES HASLITT CAHAN,
Plaintiff,

against

EMPIRE TRUST COMPANY,
Defendant. 771

And now comes the plaintiff in the above-entitled cause, by Messrs. Rounds, Schurman & Dwight, his attorneys, and in connection with his petition for a writ of error says that in the record, proceedings and in the final judgment aforesaid manifest error

778 *Bond of Charles Hazlitt Cahan on Writ of Error.*

Cahan, plaintiff, and Empire Trust Company, defendant, a judgment was rendered against the said Empire Trust Company and in favor of said Charles Hazlitt Cahan for Thirty-one Thousand Two Hundred Seventy-nine Dollars and nine cents ($31,279.09) and costs, which said amount did not include interest on the amounts of the checks as demanded in the complaint, and the said Charles Hazlitt Cahan having obtained a writ of error from the United States Circuit Court of Appeals for the Second Circuit to correct the judgment in the aforesaid suit to the inclusion of interest on
779 the amount of the checks as demanded in the complaint.

NOW, THEREFORE, the condition of this obligation is such that if the said Charles Hazlitt Cahan shall prosecute his writ of error to effect, and will pay the amount of damages and costs of the said appeal if he fail to make his plea good, then the above obligation is to be void; otherwise to remain in full force and virtue.

Sealed and delivered
in presence of

CHARLES HAZLITT CAHAN (Seal)

780

INDEMNITY INSURANCE COMPANY
OF NORTH AMERICAN,
By F. G. MERRILL,
Resident Vice-President.

Attest:

HELEN GOODWIN,
Resident Assistant Secretary.

DOMINION OF CANADA,
PROVINCE OF QUEBEC,
CITY OF MONTREAL, } ss.:

On this twenty-eighth day of February, 1925, before me personally came Charles Hazlitt Cahan, to me known and known to me to be the person described in and who executed the foregoing instrument and he duly acknowledged that he executed the same.

W. B. S. REDDY, B. C. L.

(Notarial Seal)

782

INDEMNITY INSURANCE COMPANY OF NORTH AMERICAN.

AFFIDAVIT, ACKNOWLEDGMENT AND JUSTIFICATION BY GUARANTEE OF SURETY COMPANY.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

On this 21st day of February, one thousand nine hundred and 25, before me personally came F. G. Merrill, known to me to be the Resident Vice-President of the Indemnity Insurance Company of North America, the corporation described in and which executed the within and foregoing Bond of Charles Hazlitt Cahan as a surety thereon, and who, being 783
by me duly sworn, did depose and say that he resides in the City of New York, State of New York; that he is the Resident Vice-President of said Company, and knows the corporate seal thereof; that the said Indemnity Insurance Company of North America is duly and legally incorporated under the laws of the State of Pennsylvania; that said Company has complied with the provisions of the Act of Congress of August 13th, 1894; that the seal

affixed to the within Bond of Charles Hazlitt Cahan is the corporate seal of said Indemnity Insurance Company of North America, and was thereto affixed by the order and authority of the Board of Directors of said Company; that he signed his name thereto by like order and authority as Resident Vice-President of said Company; that he is acquainted with Helen Goodwin and knows her to be the Resident Assistant Secretary of said Company; that the signature of said Helen Goodwin subscribed to said Bond is in the genuine handwriting of said Helen Goodwin, and was thereto
785 subscribed by order and authority of said Board of Directors; and in the presence of said deponent; that the assets of said Company, unencumbered and liable to execution, exceed its debts and liabilities of every nature whatsoever, by more than the sum of One Million Five Hundred Thousand ($1,500,000) Dollars.

That C. W. Lewis is the agent to acknowledge service for said Company in the Judicial District wherein this bond is given.

F. G. MERRILL.
(Deponent's Signature.)

Sworn to, acknowledged before me, and sub-
786 scribed in my presence this 21st day of February, 1925.

CHARLES J. KOCH,

(Officer's Signature, description and seal)
Notary Public, for Kings County, No. 54.
Certificate filed in New York Co. No. 122, Bronx No. 24, Queens No. 133, Richmond & Westchester Counties.
Kings County Register's Office No. 6065.
New York County Register's Office No. 6163.
Bronx County Register's Office No. 2665.
My commission expires March 30, 1926.

Citation on Writ of Error on Behalf of Charles Hazlitt Cahan. 787

By the Honorable John C. Knox, one of the United States District Judges for the Southern District of New York, in the Second Circuit, to EMPIRE TRUST COMPANY, GREETING:

YOU ARE HEREBY CITED and admonished to be and appear before a United States Circuit Court of Appeals for the Second Circuit, to be holden at the Borough of Manhattan in the City of New York, in the District and Circuit above named, on the 10th day of April, 1925, pursuant to a writ of error filed in the Clerk's Office of the District Court of the United States for the Southern District of 788
New York, wherein Charles Hazlitt Cahan is plaintiff-in-error (plaintiff below) and you are defendant-in-error (defendant below), to show cause, if any there be, why the judgment as in said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

GIVEN UNDER MY HAND at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 11th day of March, in the year of our Lord One Thousand Nine Hundred and Twenty-five, and of the Independence of the United States the One Hundred and Forty-ninth. 789

JNO. C. KNOX,
United States District Judge for the Southern District of New York, in the Second Circuit.

790 **Stipulation.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

CHARLES HAZLITT CAHAN,
Plaintiff-in-Error
and Defendant-in-Error,

against

EMPIRE TRUST COMPANY,
Defendant-in-Error
791 and Plaintiff-in-Error.

IT IS HEREBY STIPULATED AND AGREED that the foregoing is a true transcript of the record of the said described Court in the above-entitled matter as agreed on by the parties, and the whole thereof.

Dated, June , 1925.

PARMLY, STETSON & WOODWARD,
Attorneys for Plaintiff-in-Error
and Defendant-in-Error.

HUGHES, ROUNDS, SCHURMAN & DWIGHT,
792 Attorneys for Defendant-in-Error
and Plaintiff-in-Error

Clerk's Certificate.

793

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

CHARLES HAZLITT CAHAN,
Plaintiff-in-Error
and Defendant-in-Error,

against

EMPIRE TRUST COMPANY,
Defendant-in-Error
and Plaintiff-in-Error.

794

I, ALEX. GILCHRIST, JR., Clerk of the District Court of the United States for the Southern District of New York, DO HEREBY CERTIFY that the foregoing is a true transcript of the record of the said District Court in the above-entitled cause as agreed upon by stipulation between the attorneys for the respective parties.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed at the City of New York, in the Southern District of New York, this day of June, in the year of our Lord one thousand nine hundred and twenty-five and of the independence of the United States the one hundred and forty-ninth.

795

(Seal)

ALEX. GILCHRIST, JR.,
Clerk.

Opinion of Circuit Court of Appeals.

UNITED STATES

CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT.

CHARLES HAZLITT CAHAN,
Plaintiff and
Defendant-in-Error,

against

EMPIRE TRUST COMPANY,
Defendant and
Plaintiff-in-Error.

Before:

Hon. CHARLES M. HOUGH,
Hon. LEARNED HAND,
Hon. JULIAN W. MACK,
Circuit Judges.

Appearances:

CHARLES E. HUGHES, JR., for Plaintiff.
VAN VECHTEN VEEDER, for Defendant.

Cross writs of error to judgment directed for plaintiff in the District Court for the Southern District of New York.

For his own convenience entirely, plaintiff gave to his son, a man of mature years, powers of attorney to make, sign, endorse, deposit, draw and deliver cheques and other orders for the payment of money on two New York City banks in which he had deposit accounts. The son, before any such power of attorney given, had a bank account of his own in the same city and with

defendant, Empire Trust Company.

About two months after power of attorney given him, the son began to draw the series of twenty-one cheques which are the basis of this action. Each* of these twenty-one cheques was signed "C. H. Cahan, by C. H. Cahan, Jr., his attorney."

Most of the cheques were drawn to the order of himself, but some to that of Empire Trust Company; all were deposited by Cahan, Jr., in that company to the credit of his personal account, and all bear, and bore when presented to the drawee banks, endorsements showing that defendant had received them from C. H. Cahan, Jr. All but two cheques had been certified or accepted by the drawee-bank when and as drawn, *i.e.*, before deposit by Cahan, Jr.

Plaintiff, Cahan, Sr., more than a year after the last of the twenty-one cheques had been drawn, deposited and paid, ascertained that by means thereof, $31,170 had been transferred from his two aforesaid personal accounts to Cahan, Jr.'s personal account in defendant bank, and been expended for unknown purposes, but for no purpose beneficial to or known to plaintiff, and certainly not to pay any indebtedness of Cahan, Jr., to defendant, as Empire Trust never loaned any money to that depositor.

This action at law was brought after demand and refusal, and the complaint stated plaintiff's position thus:

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* There is no direct evidence of the way in which the last of the series, dated Oct. 15, 1918, was signed or endorsed, nor is the check produced; but that such cheque existed and was used like the others is not questioned by defendant's assignments of error, so we pass the matter.

Cahan, Jr., had no "power or authority" to draw cheques for the purpose of appropriating to himself and his personal uses the funds of plaintiff. The twenty-one cheques specified were drawn by Cahan, Jr., "in breach of his trust as attorney" for plaintiff. Defendant at the request of Cahan, Jr., had "without the authority or knowledge of plaintiff wrongfully placed the said twenty-one cheques" to the credit of the "personal and private account" of Cahan, Jr., and "permitted" him to appropriate the proceeds of the same, although when said cheques were so deposited "the defendant had full notice of said wrongful and fraudulent acts of" Cahan, Jr., and "knew" that its depositor in using proceeds of such cheques in his private account with defendant "was thereby wrongfully and fraudulently and in breach of his said trust misappropriating and converting plaintiff's property to his own use"; wherefore, in doing and permitting to be done what we have above set forth, defendant "knowingly participated" in Cahan, Jr.'s "wrongful and fraudulent misappropriation and conversion" of plaintiff's property.

Defendant went to trial on the general issue, and the facts appearing as above, both sides moved for a directed verdict. The Court below gave direction for plaintiff, and for the total of the cheques, $31,170, but refused interest except from date of verdict.

Whereupon plaintiff brought a writ, assigning for error failure to grant interest from the respective dates of collection of the twenty-one cheques, and defendant took out a writ because

verdict had not been directed in its favor.

HOUGH, *C. J.*:

We have not summarized all the evidence given, but have stated the only facts we deem material; they are also clearly proven.

This material evidence proves that defendant received without comment or question, collected and credited to Cahan, Jr., and permitted him to use the proceeds of twenty-one cheques on their face showing that the depositor as a fiduciary, *i. e.*, an attorney in fact, had drawn his principal's money for the purpose of transferring it to his own credit and for his own use in defendant's bank.

This evidence must of course be measured by and with the pleadings. The complaint alleges that what Cahan, Jr., did was a "conversion," *i. e.*, a wrongful misappropriation of his principal's money; and further, that what defendant did aided the attorney's fraud and amounted to participation therein. The asserted legal analogy is that both the actual doer of wrong and his accessory therein are both liable, and it is not necessary that both should profit by the wrong (*Longfellow* v. *Lewis*, 2 Hask. 258; F. C. 8487).

Admittedly defendant knew nothing of what its depositor Cahan, Jr., was doing except as information was given by the cheques he offered for deposit; wherefore, the record presents this bald legal question: is an agent's bank of deposit put on

notice by, and does it take at its peril if it receives without investigation, a cheque drawn by the agent on his principal's funds to his own order and tendered for the credit of his private account?

This question has been thoroughly apprehended by counsel, yet in treating it we cannot but think that they have juggled somewhat with the word *authority* as modified by the adjectives *actual* and *apparent*. Definition is always dangerous, for by derivation it pretends to speak the last word, to be final, which is usually impossible. For the purposes of this case, however, *actual* authority may safely be taken to mean what sundry civil codes (notably that of California) say it means, viz.: the power which "a principal intentionally confers upon the agent, or intentionally or by want of ordinary care allows the agent to believe himself to possess."

As thus described Cahen, *Jr.*, could never have believed that he had *actual* authority to use his father's money for his own purposes, while his apparent authority is not expanded by any evidence before us. He was apparently no more than he was actually, one who by written power was authorized to deal with the deposits in the drawee banks for his principal's uses and purposes. But he had both actual and apparent authority to draw the twenty-one cheques, and the misappropriation of which he was undoubtedly guilty lay not in the drawing of the cheques but in what he did with them.

In considering the mass of case law discussed we shall, so far as possible, avoid decisions dealing with defalcations by executors and trustees who had title to the funds they misapplied; we shall regard primarily cases arising out of acts by agents like Nelson, *Jr.*, or officers of corporations, both of whom act by possession and have no title to the funds with which they deal. We do not assert that the legal principles involved in these two classes of wrongdoing are basically different; we but seek to avoid unnecessary prolixity.

We likewise lay aside the class of cases of which *Bland v. City Trust Co.*, 192 N. Y. 63, is an example, wherein a defendant received from an agent a cheque of an belonging to his principal in payment of the agent's indebtedness to the defendant. Again we do not deny that the principles involved in such cases are in some ways analogous to the case in hand, but the facts at bar do not render such decisions especially apt and the field of citation must be kept as small as possible.

Circumscribing now that the trial court *directed* a verdict, our question may be thus restated: Did the act of defendant in collecting for the personal account of its depositor cheques drawn by that depositor as agent of another against his principal's funds constitute as matter of law an assistance to the depositor in an unlawful appropriation of that principal's funds?

The holding below substantially asserts that the evidence was such that the law could only be satisfied by a direction, and

that the misappropriation was complete when the money was collected and deposited to Cuhan, Jr.'s credit.

Technical or formal criticism can be made of these holdings. It may be urged that since admittedly there was nothing *per se* wrong in drawing cheques to Cuhan, Jr.'s order, it is illogical to find a *tort* in carrying out the order contained in the lawfully drawn cheque; and it is also a rather attractive criticism to say that if an agent has his principal's money either in his pocket or in his own bank account, and applies it in cash or by his own cheque to his principal's business, there is no wrong, and therefore no actionable tort; for there is no such thing as a contingent wrong. The formal answer may be that *injuria* is complete when the agent puts his principal's money where his principal did not intend it to be or wish his agent to put it, but *damnum* did not arise until actual wrongful expenditure.

Forms and formality are important. The difficulties of modern courts are largely due to modern ignorance of form; but form cannot be made as important as substantive law, and the underlying question here is whether there is or is not the judge-made business safeguard against dishonesty asserted by this court in *Hercana, etc.* v. *Central, etc.*, 284 Fed. 546, at 548, to be substantially as follows: if an agent's bank receives for deposit to the personal credit of the agent cheques drawn by the agent to his own order on the principal's funds, that bank is

by the cheques themselves charged with notice that the agent is wrongfully applying the principal's money to his own use, and if said bank fails to make inquiry it is liable to the principal for an ensuing fraudulent appropriation to his own use by the agent.

We took this rule in substance from *Havana, &c. v. Knickerbocker*, 135 A. D. 313, and approved it, although the judgment of the Appellate Division had already been reversed in 198 N. Y. 422. Since we perceive no legal difference between the position of the fiscal officer of a corporation who draws against corporate funds cheques to his own order, and puts them to the credit of his private account, and that of Cahan, Jr., in this case, we shall assume that the Havana litigation in the State Court was exactly like the present cause, and the Havana case in this Court was in legal substance an action by Cahan, Sr., against his own (the drawee) banks.

When in 1909 the Appellate Division decided the Havana case, the dissenters, per Scott, J., said that the judgment seemed to them "to extend the responsibility of persons dealing with trustees not only beyond anything that has yet been judicially decided, but also beyond *practicable* limits."

Whether there was such complete paucity of decision will be considered later. The real question to be decided, for it underlies the rule, is whether such rule does or does not unduly hamper the business of bankers and the commercial interchange of

goods. The matter in final analysis is a matter of business convenience, rather than of morals.

The problem was certainly not solved in the New York court of last resort in 198 N. Y. 422; for the judgment of the Appellate Division was reversed, not on the ground that there was no such rule as had been laid down below, but because, conceding the rule *arguendo*, the duty of inquiry was fulfilled by presenting the agent's cheques on his principal's funds to the bank containing them; and if that bank, being the agent of its depositor for that purpose, paid the cheque, it thereby affirmed that the cheque was properly drawn and should be paid according to its tenor and endorsements. Then the court intimated (perhaps somewhat faintly) that if the drawee bank made a mistake in its representations as agent as aforesaid, it would be responsible therefor.

In *Whiting* v. *Hudson, etc. Co.*, 234 N. Y. 394, the question was again presented but avoided by attributing to the certification of checks an effect of which we are unable, after much deliberation, to approve. In commenting on the decision in the Havana case, the Court admitted that "there may be technically inaccuracy in describing the drawee bank as the depositor's agent for the purpose of making representations as to the fiduciary's powers. The relation is one not of agency but of debtor and creditor"—which is exactly the position taken concerning that decision by this court when the wronged principal in the Havana case, acting perhaps too hastily on the hint of the Court of Appeals,

sued in the United States Court his own bank, alleging (as *per* suggestion) that it made a mistake in substantially saying that the cheques were "all right" by paying them.

We regard the certification of the cheques on Cahan, Sr.'s accounts as not controlling and are unable to agree with the reasoning of the Whiting case for the following reason. Let it be admitted as true (p. 404) that "the legal result (of certification) is the same as if (Cahan, Jr.) had received the cash over the counter and * * * between the drawee bank and its depositor (the present plaintiff) the cheques had been paid"; it remains true that this action, or any similar one, would have lain just as well if Cahan, Jr., had actually drawn the cash and deposited the same with defendant but had then cotemporaneously informed defendant that he had drawn the money from his father's account by virtue of his letter of attorney and now wished it to go to his personal credit and be available for his personal use.

This action depends for success not on what the drawee banks *did* but on what the unfaithful agent's bank (the present defendant) *knew;* it makes no difference whether the knowledge came from the face, form and contents of the checks tendered for deposit or from any other authoritative and convincing source.

The net result of the Havana cases in terms of the present litigation is that the New York Court held that Cahan, Sr., should not prevail against Empire Trust Company if his own banks approved the twenty-one cheques by paying them, and this Court held

that Cahan, Sr., could not recover against his own banks because the New York decision [illegible] erroneous and said banks did nothing of the [illegible]; they merely paid drafts which the drawer had a right to make, and were not concerned with what the drawer did with the proceeds.

We could not have come to the conclusion announced in 204 Fed. without holding the decision in 198 N. Y. erroneous; therefore the decision cannot be called *obiter*, as is asserted by defendant.

But even if thought *obiter*, it is an *obiter* of the same kind as the famous one in *Marbury* v. *Madison;* and plainly a mature expression of opinion by the full bench of this Court, which we can hardly condemn as a *dictum* (*Cameron* v. *United States*, 250 Fed. 943). We must either follow or overrule it.

It is not quite true, as said by the dissent in 113 A. D., that no similar rule had ever been judicially enforced. In *Anderson* v. *Kissam*, 35 Fed. 699, Wallace, J., in 1888, following as he asserted earlier decisions in the State Courts, held that it was sufficient evidence of conversion that an agent's bankers had credited to the private account of that agent cheques which on their face were the property of his principal, which is substantially the rule contended for here; and what was in effect the same ruling was applied in the Ninth Circuit in *Farmers, etc. Co.* v. *Fidelity Co.*, 86 Fed. 541. While more recently the Eighth Circuit, in *Oklahoma Bank* v. *Galion, etc. Co.*, 4 F. 2d, 337, declared it as well settled that

> "when a bank with knowledge that its funds belonged to the principal and not the agent, which was apparent from the face of the (checks), permits him to (withdraw the money) it is liable to the principal for the moneys thus deposited and withdrawn by the agent on his individual check and by him converted to his own use"—

unless facts appear justifying the payment which did not appear in the case cited and do not in the case at bar.

Further, in *Duckett* v. *National, etc. Bank*, 86 Md. 400, an agent (p. 986) deposited to his own account a cheque which on its face belonged to a trust of which the depositor was the trustee, and the Court said:

> "Knowing that the money was not (the depositors) but that it was payable to him and to be deposited to his credit as trustee, the bank had no authority to place it to his individual credit."

It may be noted, that in this case legal title was in the payee as trustee, but despite this the general ruling above quoted was announced.

More recently in *Bank of Hickory* v. *McPherson*, 102 Miss. 852, where an official who had no title received a cheque which on its face showed that it belonged to him in his representative capacity and not individually and the bank credited the proceeds thereof to him individually, the bank was held liable for what the Court rightly called "an unlawful application," *i. e.*, the payment of his private debts.

Again, in *United States, etc. Co.* v. *Peoples' Bank*, 127 Tenn. 720, a guardian did the same thing and the bank which

permitted him to do so was held liable because it had notice of its depositor's position, conveyed by the cheque itself.

It is true that the foregoing cases, as well as the English ones to be cited, nowhere state the rule in the compendious and far-reaching form in which it was put by Noyes, J., in 204 Fed. But they all show (as indeed do the New York cases) that the question is one of degree. It is never doubted that if a bank of deposit has notice which would lead that fiction of the law a "reasonable man" to suspect wrong, the bank which fails either to verify or dispel that suspicion is responsible for the results.

Consequently the question in this case, as in the Havana cases, is always, not whether there was notice of something, but whether there was *sufficient* notice in and by the face, form and contents of the cheque tendered for deposit.

In the English cases, *Ex parte Darlington, etc.*, 4 DeG. J. & S. 581; *John* v. *Dodwell*, (1918) A. C. 563, and *Ross* v. *London, etc. Bank*, (1919) 1 K. B. 678, it is not asserted that the piece of negotiable paper tendered for deposit and collection was in and of itself, and by its form, sufficient notice to incite the receiving bank to action and investigation at its own peril, although in the Ross case at least there was no notice given, or indeed possible, other than the form of the cheques deposited, which were, however, of an unusual character, *i. e.*, they were obviously drawn for purposes probably foreign to any use that the depositor could lawfully make of funds derived from them.

But in the most recent English case, *Underwood, Ltd.* v. *Bank of Liverpool,* (1924) 1 K. B. 775, a corporate officer tendered for deposit in his personal account cheques which were on their face property of the corporation, endorsed by him officially for the credit of his personal account. Without investigation the bank received these cheques, gave the official personal credit for them and permitted him to dissipate the account. We perceive no difference in legal effect between that case and the one at bar. Scrutton, L. J., disposed of what is the vital question underlying the rule asserted by the plaintiff here and by this Court in the Havana case, by saying:

> "If banks for fear of offending their customers will not make inquiries into unusual circumstances, they must take with the benefit of not annoying their customers, the risk of liability because they do not inquire."

This is substantially the same brushing aside of the objection to the practicability of the rule that Wallace, J., used nearly forty years earlier.

Still adhering to an examination of cases in which the wrongdoing depositor had no title to that which he misused, there is undoubtedly authority *contra*, and decisions have not always been apparently consistent. The result reached in *Santa Marina Co.* v. *Canadian Bank*, 254 Fed. 391 (Ninth Circuit), holds that where a corporate officer had authority to endorse cheques belonging to the corporation in blank and he did so endorse and deposit them to his private account, the cheques so endorsed became the property of his bank on being deposited; and in the

form of the cheque the court found absence of timely notice that the depositor had no title to the cheques so deposited. This does not seem to us consistent with the earlier decision of the same court above cited.

Goodwin v. *American National Bank*, 48 Conn. 550, presented questions suggested by this case in several forms, for the wrongdoing depositor was known to the defendant bank through his private account, through an account as Town Treasurer, and as the executor of an estate. The bank permitted him to deposit items which on their face belonged to the town of which he was treasurer and the estate of which he was executor in his private account, and in every instance when his defalcations appeared the bank was exonerated. The town moneys and the estate moneys were treated alike and the *ratio decidendi* is forceably set forth by Pardee, J., at page 568:

> "It might be a wholesome rule if established and understood that any omission by a trustee of the mark of the trust from either the securities or moneys belonging to it even with an honest purpose and for the briefest time, should be notice to all persons having knowledge of such act that a fraud had been accomplished, if thereby the fidelity of trustees could be secured; but when a trustee has broken down all other barriers between himself and fraud we fear that he will not allow a rule of law to restrain him; those for whom he acts must ever find their *protection in his integrity.*"

We are of opinion that, not universally, but in numerous jurisdictions, and especially in the courts of the United States and those of England, a rule which Pardee, J., thought *might* be well, has been announced and enforced.

In the case of agents acting by procuration, if there be no such rule, if for instance an attorney in fact can as such attorney not only withdraw his principal's funds from one bank, as he plainly has a right to do, but deposit them in another (or even perhaps in the same bank) to his own credit without any responsibility on the part of the bank accepting such deposit, a principal who gives a power of attorney, a private corporation which gives usual powers to its financial officer, a municipality which can only act through its elected or appointed officers is left without any remedy except that which the Connecticut Court thinks is all that the law gives, *i. e.*, the integrity of its fiduciary.

At bottom the question here depends upon whether the form of such drafts as those at bar gives clear enough notice that the agent is not acting in the principal's interest. There are indeed cases in which it might be in the principal's interest for the agent to withdraw funds from the principal's account and deposit them in his own account, even in a bank of the same city or in the same bank. The only case we can think of is one in which the agent wanted to conceal his principal's name in a transaction in which even a cashier's cheque might excite suspicion. But the payment of the agent's own debt might in fact be a part of such a transaction, and that possibility does not seem to us sufficient justification. We must balance probabilities and conclude that we hold the form of the cheque should be taken as evidence that the agent is engaged upon ventures of his own, and

as to his authority to conduct the same, the bank must assume the risk of investigation.

This Court once decided to adopt and enforce the rule announced in the Havana case. It is a hard rule as business is ordinarily conducted, not only in the financial institutions of a populous and busy city, but perhaps even more so in smaller communities where men are more widely known by reputation and are more influenced by personal reputations than can be expected in the crowds of a cosmopolis.

We feel acutely the disadvantage of continuing to differ with the highest Court of New York; yet the treatment in that state of the Havana case in 198 N. Y. may be noted. It has been cited twice, first in *Bischoff* v. *Yorkville Bank*, 218 N. Y. 106, at 113, a case involving the wrongdoing of an executor, and cited to show that

> "although the depositor is drawing checks which the bank may surmise or suspect are for his personal benefit, it is bound to presume in the absence of adequate notice to the contrary that they are properly and lawfully drawn. Adequate notice may come from circumstances which reasonably support the sole inference that misappropriation is intended as well as directed."

The inference is that the Havana case held that the mere presentation of a cheque that might possibly be misused was not by reason of the possibility "adequate notice." The statement of law may be admitted, but that was not the point of decision by the Court of Appeals in 198 N. Y.

It was again cited in *Whiting* v. *Hudson Trust Co.*, *supra*,

where the inaccuracy of the reasoning of Bartlett, J., in 198 N. Y. was substantially admitted, but a re-discussion of the matter was avoided by attributing to certification of cheques a result with which as above shown we are unable to agree; the question is always one of *notice*, and we cannot agree that notice may not be given as well by a certified cheque as by one uncertified. It may be given, as we have shown above, by word of mouth. Certification is among other things a guaranty that the cheque is drawn by proper authority against sufficient funds; it is not a guaranty of the identity or authority of the payee. How it can be treated as enabling the recipient thereof to shut his eyes to everything also written on the cheque form we are quite unable to perceive.

It seems to us that the exact doctrine of the Havana case (in 198 N. Y.), its essential holding, and the reason for the result reached has, while not rejected in form, been substantially disaffirmed by the very court that pronounced it. The treatment of the decision by the lower courts of 198 N. Y. is perhaps unimportant but interesting. It was practically disregarded in *Egre v. Coal, etc. Bank*, 208 A. D. 646, at 653, and perusal of other cases in the same court subsequent to the date of 198 N. Y. will confirm the impression that New York has been far from enforcing the doctrine laid down in the decision we still cannot follow.

Our examination of authority, assisted and guided by very able briefs, has led to the conclusion that upon authority there is no reason to depart from the body of law formulated by

Negro, *J.*, in 201 Fed. The reason for the rule is one of public policy; and, as usual, arguments for both sides may be and have been persuasively presented. Business convenience and expedition, a liking for that which is "practicable" rather than that which is burdensomely circuitous, lead to the result somewhat plainly set forth by Pardee, *J.*, supra; while a desire to yield that measure of assistance which the law reasonably attempts to give to the victims of misplaced confidence lead to such statements of public policy as have been made by Swanson, *J.*, and Walton, *J.* Upon the whole, we still incline to the latter view, and adhere to that view of law and public policy set forth in our previous decision under which direction of verdict for plaintiff was clearly right.

There remains the question of interest upon the verdict. On this point we adhere sufficiently to the announcements made by us in *Singleton v. Phoenix, etc. Co.*, 139 Fed. 280, and *Bennett v. Bigelow*, 283 Fed. 268, to the effect that in deciding causes arising within the State of New York we grant interest in accordance with the rules deducible from the decisions of New York.

This is in form an action for conversion, and when the amount of damages is, as here, a mere matter of computation from facts undisputed, the New York rule is not doubted, interest is a matter of right (*Thomas v. Dean*, 61 N. Y. 91, 96), affirmed 171 N. Y. 666). It follows that the Court below erred in not granting interest on the several items represented by the checks one charges from the dates when they were respectively credited by

defendant to Cahan, Jr. This error may be corrected by remitting the case under plaintiff's writ of error to the Court below with directions to amend the verdict in accordance with this opinion (*Speelman* v. *Iowa, etc. Ass'n*, 4 F. 2d, 501, at 504).

IT IS ORDERED: That the defendant's writ of error be dismissed, and that upon plaintiff's writ of error the judgment be remitted to the Court below for modification as required by this opinion. Plaintiff will recover one bill of costs in this Court.

Decided January 4, 1926.

Order for Mandate.

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the Court Rooms in the Post Office Building in the City of New York, on the 11th day of January, one thousand nine hundred and twenty-six.

Present:

Hon. CHARLES M. HOUGH,
Hon. LEARNED HAND,
Hon. JULIAN W. MACK,
Circuit Judges.

CHARLES HASLITT CAHAN,
Plaintiff-in-Error,
Defendant-in-Error,

v.

EMPIRE TRUST COMPANY,
Defendant-in-Error,
Plaintiff-in-Error.

Error to the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the defendant's writ of error be and it hereby is dismissed, and that upon plaintiff's writ of error the judgment be remitted to the court below for modification as directed by the opinion of this court, with one bill of costs to plaintiff in this court.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

C. M. H.
L. H.

Clerk's Certificate.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK, } ss.:

I, WILLIAM PARKIN, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 287, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of

Charles Haslitt Cahan,
Plaintiff in Error,
Defendant in Error,

against

Empire Trust Company,
Defendant in Error,
Plaintiff in Error,

as the same remain of record and on file in my office.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 11th day of
(Seal) February, in the year of our Lord One Thousand Nine Hundred and Twenty-six and of the Independence of the United States the One Hundred and Fiftieth.

WM. PARKIN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 26, 1926

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.